

The Century Social Science Series

CRIMINOLOGY AND PENOLOGY

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REVISED EDITION

D. APPLETON-CENTURY COMPANY

INCORPORATED

NEW YORK

LONDON

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BOOK I
CRIMINOLOGY

PART I
THE PROBLEM OF CRIME AND CRIMINALS

CRIMINOLOGY AND PENOLOGY

CHAPTER I

CRIME AND CRIMINALS

THE criminal and his deeds have excited the interest of mankind from time immemorial. The immortal Homer has described for us in noble poetry the degenerate Thersites. The tragedy of Hamlet centers about a crime. The character of Shylock provides the dark background for the lofty character of Antonio and the bright courage and facile ingenuity of Portia. The criminality of Iago gives distinction to an otherwise uninteresting character. In fact, books have been written on the criminals delineated by Shakespeare. So, the catalogue of authors who have written about criminals might go on to include Dickens, Zola, Victor Hugo, and a host of modern novelists, to say nothing of A. Conan Doyle and other purveyors of detective stories. This interest in crime is attested also by the large place given to the subject in our daily newspapers. The fact is that people are interested in human conduct, the more extraordinary the conduct the greater the interest.

WHY ARE WE INTERESTED IN THE CRIMINAL?

A part of this interest may be explained by the *challenge of the unusual*. Most men and women lead lives which do not violate the standards of conduct approved by society, but the unusual person stands out clearly in the society of which he is a part. However, interest in the unusual explains society's attention not only to the criminal, but also to the hero, the magician, the sage, and the victor in a race. There is another principle which must be invoked to explain why people are interested in crime and criminals.

Some crimes are *reversions* to conduct which in earlier states of social development marked the heroic leader. How much of our interest in crimes and criminals springs from old race habits and sentiments left in us by the rough and less civilized life of men? Is it not suggestive that the early literature of many peoples glorifies bloodshed and rapine? The writers of the ancient literature of Israel make a hero out of David, who slew the

Philistine, and who later was an outlaw and did not hesitate to live off the country.¹ Jacob stands out as one of the patriarchs, yet the author of the story takes a certain delight in picturing the cunning way in which he cheated Esau out of his birthright and overreached his father-in-law, Laban, when the latter had played a trick on him in giving him to wife the unattractive daughter, Leah, instead of the beautiful and beloved Rachel.² *The Story of Burnt Njal*, one of the Icelandic Sagas, glorifies violence even though committed by a criminal against the increasing control of society.³ Northfield, Minnesota, is a beautiful small city, the seat of two good colleges. A number of years ago it was the scene of the robbery of a bank by the Younger and James brothers. In the Mississippi Valley few know of the colleges located at Northfield, but many know that it was the scene of that robbery. The press gave wide publicity to the robbery and thousands of copies of a book describing the exploit of the robbers were sold, but the colleges have received very little publicity. Why? Because the people are more interested in a daring crime of that sort than in the constructive work of educational institutions.

Until recently men's lives have been subject to danger. To fear there are two reactions: cowardice and courage. Each produces its own emotional result: cowardice, a high degree of tension accompanied by distress; courage, the thrill of high resolve and the accompanying activities which release nervous tension. Danger met courageously, therefore, gave a thrill to life. The criminal faces danger. Throughout the ages of man's social development his life has been menaced on every hand; he became habituated to the thrill of danger courageously faced. The "bright face of danger" still possesses a challenge. In the criminal, *people vicariously experience the thrill of danger* met with appropriate activity.

More important is the *feeling of danger* to ourselves and our property which the criminal induces. We feel that this being menaces social stability. He threatens our established order. Accustomed to civilization, we are psychologically upset by the reversion of the criminal to barbarism. But, since it is only remotely possible that the criminal may harm us, why is it that we resent his anti-social act? There are two answers possible. When Haman set out to destroy all the Jews in the kingdom of Ahasuerus, Mordecai sent word to Esther, the queen, "Think not with thyself that thou shalt escape in the king's house, more than all the Jews."⁴ Since she was a member of the hated people, the contemplated acts of Haman were likely to reach her also. Since

¹ *I Samuel*, 17 50, 18 7, 22 1-25 13

² *Genesis*, 27 1-46, 29 21-35, 30 37-43

³ Dasent, *The Story of Burnt Njal*, Everyman's Library, Episodes 65, 71-76.

⁴ *Esther*, 4 13.

the criminal, for example a robber, is at war with orderly society, there is no reason to believe that any particular member of society will certainly escape his depredations. The danger threatens all, although there is little likelihood that the robber will attack all members.

Moreover, a criminal act arouses our resentment by reason of *our sympathy with the injured member of the group*. Says Cooley, "We understand the criminal act, or think we do, and we feel toward it resentment, or hostile sympathy; . . . If one man strikes down another to rob him, or in revenge, we can imagine the offender's state of mind, his motive lives in our thought and is condemned by conscience precisely as if we thought of doing the act ourselves."⁵ Sympathy for the injured and conscience, a product of organized social life, stir our resentment. We ourselves feel the injury. This resentment, however, is not felt if the victim is not a member of our group or class. We may be interested and perhaps shocked by a brutal murder of an Italian in a vendetta in the Italian quarter of our city or of a loose woman by a "Jack the Ripper" of the Whitechapel district of London, but it does not cause us to fear for ourselves or our own "In contrast with this (the Whitechapel murder), take the case of a commonplace burglary. Never a night passes that some crime of this kind is not committed in the metropolis. No one can be certain, as he shuts his door and lies down to sleep, that the sanctity of his home will not be thus outraged before morning. And in every instance there is a real element of danger to the occupants, for the burglar is generally ready to resort to violence if disturbed in the commission of his crime."⁶

Is not our interest in the criminal related more or less closely to *our interest in the rebel*? Why is it that Euripides' Prometheus and Milton's Satan and Goethe's Faust grip our imaginations? All were rebels against omnipotent Deity. All stand out for pride, high intellectual qualities, and daring in the face of certain punishment. The tragedy of impotent daring against overpowering might make Satan and Faust characters which, with all their evil propensities, excite our admiration. Why? Is it because of their bold disregard of consequences? Is it because we admire perversity, or courage? Is it not rather because that high courage, that disregard of consequences, those intellectual qualities are linked with enterprises against authority, however benevolent? Humanity has not been civilized, unified into obedient groups without strong pressure on individual initiative and the inborn impulse to vary. Social control has not been achieved without violence to many human and, under certain conditions, helpful tendencies to swerve from the

⁵ *Human Nature and the Social Order* (New York, 1902), p. 387.

⁶ Anderson, *Criminals and Crime* (London, 1907), p. 4

conventional. Certain criminals are rebels against social control. In some ways they are akin to the geniuses who break new roads to human freedom through the barrier of social restraint. There is just enough of the rebel in many of us to respond with interest to the anti-social activities of the criminal.

SCIENTIFIC INTEREST IN THE CRIMINAL

With the development of the sciences which throw light upon human conduct, such as biology, psychology, psychiatry, and sociology, has come an increasing *scientific interest* in crime and the criminal. To the interest aroused by the strange, the heroic, and the fearful has been added the curiosity as to causes producing anti-social conduct. Moreover, understanding of causation has led to the most revolutionary and interesting experiments in treating the criminal. Hence, in increasing numbers both the scientific and the practical minds have been attracted to this problem. As men have come to see that almost any science has relationship to the problems of human behavior, they have developed concern with this aspect of conduct. The medical man is inquiring how abnormal physical conditions affect conduct, the analytical chemist is summoned from his laboratory to make analyses of materials used in bombs for the purpose of ascertaining whether the accused is guilty, the toxicologist is called upon to examine the organs of the dead to ascertain whether poison was used to effect death, and the physiological chemist to analyze the blood for purposes of identification. While the criminal makes use of modern scientific processes to commit crime, society is calling upon the scientists to discover him, prove him guilty, and treat him. Man's social activities are the product of his own make-up and the circumstances of his life. He can be explained as never before. The task of reforming him can be attacked with an intelligence and hope never before possible.

Moreover, *ethics and religion*, as they abandon their metaphysical and absolute bases of former times, are coming to see that the criminal is of interest to them. They have had a share in the responsibility of explaining the criminal, and they have something to contribute to the program of prevention and reformation.

Lastly, *the economist and the business man* have come to see that the criminal is of interest to them. The economist cannot be blind to the economic situations which stimulate to a criminal career. The business man is coming to recognize that since crime is a costly burden upon society he can no longer be indifferent to the problem.

Hence, decreasingly the criminal and his crimes excite an interest chiefly sensational. Both are coming to be recognized as pressing social problems challenging the serious attention of every member of society in every walk

of life. The size of the problem, the causes of criminality, and inquiry as to the best methods of combating crime, of treating the criminal, and of checking crime at its sources are focusing more serious attention upon this field of social life.

Yet we make a mistake if we think that what we do to the prisoner, once he is disposed of by the court, is not of public interest. He is a waste product of our civilization, one of "the costs of progress." Were he finally disposed of when he goes to prison, perhaps it would be of less public concern how we treat him. But usually the prisoner comes out from prison after a time and reenters society. Often he avenges himself upon society for its neglect of him while in prison, for the injustice done him on his release. If his imprisonment has not meant reformation, he comes out worse than when he entered, craftier than ever, embittered by the experience, or trained in crime by association with more skilful criminals. If he has been hardened by his experience in prison rather than socialized in his attitude, he is a greater menace to property and person than before. Therefore, the public should be concerned with what is done to the criminal in prison. What are the effects of this treatment upon his mental processes? Has he learned his lesson in self-control, or has he learned the arts of the more hardened offenders? Does he come out with the determination to "go straight" or with the determination to "get even" with society? Has he been trained to be an honest citizen or a rogue? Has he been trained to earn an honest living by means of newly acquired industrial skill, or has he been exploited by the state, or worse still, by a contractor who bought his labor cheaply? Has his family been held to him, or has he been shut away from them so that the only ties which could help him no longer bind him? Too often he has been depressed and crushed; the iron has entered into his soul; the injustice of his treatment has embittered his spirit. His emotional nature, instead of being studied, understood, and handled so as to make him a good citizen, has been mishandled so that he is less fitted to social life than when he went in as a condemned man. It is, therefore, of infinite concern to society how the criminal is treated. Penology should be of the most vital interest to those concerned with the social welfare.

"A prison, where the will of God men must await—
Where youth and age must ever nod to frowning fate;
Where tongues are mute, and men arise to new-born wrong,
While earth, revealed to cloudless skies, is thrilled by song.

"No morn, no noon, no night, no dawn where prison bars
Blot out God's plan, where man must fawn or walk with scars.

CRIMINOLOGY AND PENOLOGY

O life! boon of the Power above, I've tarried long
Far from the ways where life is love and all is song.

“I know the awful chill of stone, the convict's tears;
How blood—yes, life—may not atone for sins of years.
Full well I know, and would forget, the price of sin—
And oh, how sweet to know the debt is nearly in!

“But hold—the debt is never paid; the record stands
The sins of life can never fade as mankind plans
The hate, the tears, the walls, and blood—can Time efface?
Can Hope and Love again rebuild where thrived Disgrace?”

—From Stell and Null, *Convict Verse* (Fort Madison, Iowa, 1908).

QUESTIONS AND EXERCISES

- 1 Analyze the roots of the public interest in the Loeb-Leopold murder.
- 2 At the present time does scientific interest in the criminal bulk as large as non-scientific interest? Why?
- 3 Look over the items concerning crime in any newspaper and explain why they are “news.”

CHAPTER II

DEFINITIONS: WHAT IS A CRIME? WHAT IS A CRIMINAL?

THREE is much loose talking and thinking about crime and criminals. What do we mean by these terms? Are we using them with a precise and definite meaning?

Legal Definitions. From the legal point of view any action by an individual in contravention of a law is a crime. In the statistics of crime this is the definition that must be kept in mind. This legal definition, however, gives us certain difficulties. According to this definition murder and driving on the wrong side of the street are both crimes. True, the one is a felony, while the other is a misdemeanor. Yet, both are acts forbidden by law. In a developing society acts which yesterday were not crimes are made such by the enactment of new laws. Under this definition the old Roman axiom is true that "without law there is no crime." This concept of crime makes necessary for purposes of punishment that crimes should be differentiated as to their seriousness. Hence, in our law some crimes, such as murder and treason, by reason of their greater gravity are called felonies, while others, petty crimes such as fighting and drunkenness, are called misdemeanors. The statutes now discriminate definitely between the two. In our law now the term *felony* has lost its historical signification, that of forfeiture of estate, and is used to distinguish certain crimes from misdemeanors, the latter being those which are punished by a lighter punishment, such as fine or imprisonment in a county jail.

Before 1920 it was lawful in the United States to make and sell intoxicating beverages; then under Prohibition it became a crime. What happened in those few short years that made an act that was highly profitable and which was looked upon with a good deal of toleration, a crime? Nothing but the enactment of a law. Why then was it a crime in, say, 1925 when it was not in 1914? This question reveals the sociological inadequacy of the legal definition of crime.

The Sociological Definition. It was the consciousness that the legal concept of crime does not go deep enough to satisfy the demands of developing social science which led some of the criminologists, such as Garofalo, to attempt "a sociologic definition of crime." Garofalo was seeking to

formulate a definition which would "designate those acts which no civilized society can refuse to recognize as criminal and repress by means of punishment."¹ He applied to such an act the term "natural crime." Believing that it is scientifically inadequate to attempt to define crime by an examination of the question as to whether one cannot by a careful examination of crimes in various ages find those which were always and everywhere considered criminal, he set to work along another line of investigation, namely, an analysis of the sentiments of mankind. On analysis Garofalo finds that the two sentiments offense against which in all ages and among all peoples constitute crime are those of *probity* and *pity*.² He adds that an act to be criminal must be *harmful to society*.³ These moral sentiments may change from age to age and may vary among different peoples. Nevertheless, whatever their strength and whatever form they may take, an offense against them constitutes a natural crime. In Garofalo's thought this "natural" definition of crime is also a "sociologic" definition. Garofalo's definition of a crime is essentially:

*Crime is an immoral and harmful act which is regarded as criminal by public opinion because it is an "injury to so much of the moral sense as is represented by one or the other of the elementary altruistic sentiments of probity and pity. Moreover, the injury must wound these sentiments not in their superior and finer degrees, but in the average measure in which they are possessed by a community—a measure which is indispensable for the adaptation of the individual to society."*⁴

Carefully analyzed, does Garofalo's definition satisfy the canons of a sociological definition? What does he mean by "natural"? If he means that the act offends sentiments which are biologically rooted in human nature, then how can the definition be called "sociologic"? If what we are seeking in a sociological definition of crime is a definition based upon ideals and sentiments which form a part of what is sometimes called the "social mind," then we must take into consideration the beliefs and standards of society, no matter how these beliefs and standards are produced, whether generated by the animal instincts or by social custom and tradition. Moreover, in view of the lack of objective tests of harmfulness in many ages of mankind's development, the sociological definition of crime will hesitate to say that crimes are actually harmful to society, as Garofalo seems to state. Let us rather say that, instead of crime being an act which contravenes an ele-

¹ Garofalo, *Criminology* (Boston, 1914), p. 5.

² *Ibid.*, pp. 40 ff.

³ *Ibid.*, p. 51.

⁴ *Ibid.*, pp. 33, 34.

mentary, universal human sentiment and which is socially harmful, *crime is an act which is BELIEVED to be socially harmful by a group of people which has the power to enforce its beliefs, and which places such act under the ban of positive penalties*. This group believes it harmful, sometimes because it offends the sentiments of probity or pity, but often for other reasons. Instead of emphasizing the origin of the notion of crime in reaction against an instinctive sentiment such as probity or pity, we should stress its origin in the group fear of its harmfulness and in the desire for social protection from the violation of the social standards of the dominant group, however those standards arise, and in that protective moral coloration denominated by Ross as "ethical dualism."

The essential elements of this definition are (1) belief that an act is socially harmful (2) by a group which has the power to enforce its belief by certain penalties and (3) actually bans such an act with penalties. This definition does not assume that the belief arises in any particular way. The belief may be the result of certain inherent tendencies of human nature such as instincts, or may be the outcome of customs, traditions, taboos, ideals, and ideas derived from the experience of the race or people. Since beliefs are in part the result of social experience, and since they are means of social control, this definition may properly be called a sociological definition.

Moreover, the belief that the thing forbidden is harmful may be true or untrue. That question cannot be settled in the absence of standards scientifically established.

Furthermore, the question as to how the belief that an act is harmful to society arose is of no practical importance. While in some cases an act may be made a crime because it offends the sentiments of probity and pity, there are cases in which such offense is not the motivating cause. For example, the breaking of certain taboos in primitive society, violation of which entails group punishment, certainly does not offend such sentiments. Thus, the king of Onitsha may not quit his palace on pain of death or the surrender of one of his slaves to be executed in his presence.⁵ Violations of many of the taboos to be found in primitive society were punished by death. Most of the taboos have their root in fear of the consequences to an individual or a group. The important motive back of the sanction for the enforcement of a taboo is the *belief* that the violation of the taboo is harmful to society.

Again, the belief in the harmfulness of conduct may be enforced by the whole group or by any part of it which is in a position of superior power. If the belief is held by practically every member of the society, it is probable that, except in a few cases, moral sanctions alone will be employed. The

⁵ Frazer, *The Golden Bough* (New York, 1922), p. 200.

mores of the group will determine conduct. Only an especially flagrant violation of the mores will demand positive methods of punishment. Most of the taboos of primitive peoples are enforced in this way. The violator will in his own person suffer the punishment of magic or of the gods. But if his act endangers others, and especially if his act is believed dangerous to the entire group, then he, and often his relatives and his property, must be destroyed. On the other hand, if society is split up into classes, the beliefs of the dominant class will determine what acts are crimes and what shall be the punishments for such acts. At one time the dominant class is the aged, at another the men, again the conqueror, or an economic class, and sometimes the religious class. In such a case the inferior classes may not believe that the act is dangerous to themselves or to their group, but nevertheless the dominant party enforces its belief. Hence, the significant thing is that an act is made criminal by the group which has the power to enforce its beliefs. We see the application of this principle both in primitive and in civilized societies. In the latter it is illustrated in a fugitive slave act, child labor laws, and prohibition laws.

There are certain acts which a considerable proportion of the community recognizes as harmful to society, such as the manipulation of the deposits in banks by the bankers for their own private profit, clever management of the affairs of an industry or a commercial concern to the detriment of the mass of small stockholders for the benefit of the "insiders," and many others of like nature. But because a sufficient number of the people of the country who have power adequate effectively to condemn such practices have not put such acts under the ban of positive penalties, those acts are not crimes. Some think that sociologically such acts are crimes because they are injurious to society, but not enough of us have yet come to such a belief as enables us in a democracy to enforce it.

Relation of Crime to Immorality. The line which divides crime from vice is a bending, irregular one dependent upon the beliefs of the times, the stage of moral development reached by a people, and the degree of critical analysis which has gained rather wide acceptance.⁶ Most crimes are looked upon as immoral. It is both criminal and immoral to commit murder in most situations, yet when one commits murder in self-defense or when one kills a man in battle, the act is looked upon as a moral act by most people. It is immoral to lie, but legally it is not a crime so long as one does not swear to it and thus commit perjury. Vice has been described as an injury done to oneself through violation of natural law which affects others only indirectly, if at all.⁶ Yet some vices and immoralities do affect others injuriously. For

⁶ Wines, *Punishment and Reformation*, Revised Edition (New York, 1910), p. 11.

example, intemperance is a vice, yet generally the inebriate's family suffers, and often his neighbors. The distinction is not that a vice affects the vicious individual alone, but that society has not yet come to hold the belief strongly that such an act is so harmful to society that positive measures of repression must be used. As long as acts are immoralities, or vices, society depends on the indirect methods of social ostracism, loss of social standing, conscience, and regard for the esteem of others to control such actions.

Moreover, the social judgment of the seriousness of the act explains why what may once have been considered a crime may no longer be treated as such. When it was believed that the slightest disrespect to parents entailed danger to the society, it was possible to have a law which said, "He that curseth father or mother, let him die the death."⁷ The Code of Hammurabi provided, "If a man has struck his father, one shall cut off his hands."⁸ To-day such a son would certainly be thought a very ungrateful child, but no such penalty would be visited upon him, and in many states he would not be considered a criminal. On the other hand, some of the things which were in other days or among different people looked upon as matters of comparative difference, or perhaps only as immoralities, have now become crimes. For example, some of the patriarchs of the Old Testament are said to have had more than one wife. The same is true in many lands to-day. This custom was then not looked upon even as immoral. To-day in civilized societies to have more than one wife at the same time constitutes the crime of bigamy.

Moreover, as illustrations that both morals and crimes change with the development of society may be cited some of the crimes possible only in such a highly organized system of business as we find in the Western world. Drawing a check on a bank in which you have no funds would be impossible without a banking system in which checks are used. Taking an apple from a farmer's orchard is only a boyish prank, but let a boy take one from a fruit stand in the city and he will be a subject for the juvenile court.

Crime and Sin. Originally religion had closer relations to crime than to-day. The conception that the welfare of the group as well as of the individual was closely bound up with the favor of the tribal god or gods operated to produce the belief that any offense against the god was an offense against society. Hence, acts of irreverence or sacrilege, and in later times even of heresy, were made crimes, i.e., they were believed to be dangerous to the welfare of the group and therefore were forbidden and repressed by severe penalties. Thus, in the Code of Hammurabi, coming probably from the latter

⁷ *Exodus, 21:17, Matthew, 15:4*

⁸ *Hastings, Dictionary of the Bible, Extra Vol., "Code of Hammurabi," Sec 195*

part of the third millennium B. C., it is provided that, "If a votary, a lady, who is not living in the convent, has opened a wine-shop or has entered a wine-shop for drink, one shall burn that woman."⁹ Likewise in the Levitical legislation in the Bible we have the law, "And the daughter of any priest, if she profane herself by playing the harlot, she profaneth her father: she shall be burnt with fire."¹⁰ Moreover, it was commanded that, "Thou shalt not suffer a sorceress to live."¹¹

Here it is evident that the crime has a religious root. These are only illustrations of many sins which are made crimes by ancient legislation. We call them and similar conduct sins to-day, because in the course of social development we have come to separate religion from the state, and we no longer feel that in every case a sin is also a crime against the social group. To-day in most civilized societies heresy may cause a man to lose his connection with organized religion, but it is no longer considered a crime. Some sins, however, remain in the category of crimes. For example, public blasphemy, acts of sacrilege, and disturbing religious meetings are punished by law. To-day, however, they are crimes not because they are sins but because they are attacks upon the theory widely held that freedom of religious worship is a fundamental of democracy.

On the other hand, there are some crimes which are not looked upon as sins. Using the term *crimes* to cover all acts or omissions which are subject to positive penalties, we may cite as an illustration of the last statement the fact that in some religions fishing on Sunday is looked upon as a sin, while fishing out of season is not, although the latter is punishable according to law and the former is not.

CLASSES OF CRIME

Several classifications of crime have been worked out, varying with the stage of social development reached by a people and with the recognition of the various social interests for the protection of which government is organized.

Until the rise of sociology most of these classifications were based upon legal grounds. Sometimes the classification was based upon the nature of the act, for example, homicide and theft. Sometimes the classification was determined by the procedure used in trying the criminal or the punishment meted out to him. Until now it has been customary to say that the

⁹ Hastings, *Dictionary of the Bible*, Extra Vol., p. 602, Sec. 110.

¹⁰ *Leviticus*, 21.9

¹¹ *Exodus*, 22.19

classifications are either legal or functional.¹² Both of these are really legal classifications, the legal based upon the nature of the crime, the functional upon the ends to be secured by punishment.

In the evolution of criminal law there have come to be recognized two or three classes of crime. In the English common law three classes of crime were recognized: (1) treason, (2) felony, and (3) misdemeanors. Originally felony included treason, but in the course of time treason came to be recognized as a special kind of felony. Originally a felony was conceived to be a crime which could not be compounded for. Misdemeanors were looked upon as crimes of less gravity than felonies. Some such classification is to be found in the law of most civilized states.¹³ In most States of the United States, except Louisiana, the criminal law follows the English common law and classifies crimes under treason, felonies, and misdemeanors. In most of the States the gravity of the offense is indicated by the punishment. The classical theory of fitting the punishment to the crime is reflected in this practice.

Felony is punished by death or imprisonment or by imprisonment and a fine. Misdemeanors are punished by imprisonment or fine or both. The length of imprisonment and size of the fine are intended to correspond to the gravity of the offense.

In the development of law many acts which were once crimes have become torts, or matters of civil process for the recovery of damages. Some felonies have become misdemeanors, on the one hand, and on the other some misdemeanors have been made crimes by statute. All such changes register modifications in social judgment as to the injuriousness of acts and as to the proper methods of preventing such acts.

With the development of a more careful study of society, critical attention has been given to crime as a social phenomenon. With the growth of sociological theory attempts have been made to relate crime to certain sociological concepts. In considering how to deal with crime and criminals it is necessary to take into account human nature and the motives, interests, and habits of people, customs which have grown up in society, and the social machinery.

In considering the problem of crime and its classification the question arises, Where does crime relate itself to the social forces, that is, the forces which operate in society? In classifying crimes by a legal scheme, account

¹² Parmelee, *Criminology* (New York, 1918), pp. 264-270

¹³ Thus, in the French penal code offenses are divided into *crimes*, *délits*, and *contraventions* with penalties corresponding. Such a classification is to be found in most Continental codes. In the Dutch code of 1881 and the Italian of 1889 there are but two classes, *délits* and *contraventions*.

is taken of the certain interests menaced by crime, but these interests are considered to be individual interests. With the development of sociology it has come to be seen that individual rights or demands grow out of social relationships and become social interests. Hence crimes may be classified with reference to the social interests which they menace.

A theory of social interests closely related to the problem of criminal repression is that propounded by Roscoe Pound. While his theory is confessedly built on a study of the legal measures which have been worked out for the preservation of society and therefore may ignore some interests which are protected by non-legal methods, it is significant in that it is built on the theory that "Legal phenomena are social phenomena." Moreover, his theory is formed under the conviction that ". . . for jurisprudence, for the science that has to do with the machinery of social control or social engineering through the force of politically organized society, it is no less true that individual interests are capable of statement in terms of social interests and get their significance for the science from that fact."¹⁴ These interests he classifies as (1) interest in the general security, (2) interest in the security of social institutions, (3) interest in the general morals, (4) interest in conservation of social resources, (5) interest in general progress, and (6) interest in the individual life.

Under the first class he places interest in the general safety, in the general health, in peace and public order, in the security of acquisitions, and in the security of transactions. Under the second he cites interest in the security of domestic institutions, of religious institutions, and of political institutions. Under the third he classifies all social demands to be secured against acts or courses of conduct offensive to the moral sentiments of the body of individuals in society at a given time. The attempt to establish such security he sees in legal policies against dishonesty, corruption, gambling, and other things of immoral tendency. Under the social interest in conservation of social resources he places the demand that the goods of existence shall not be wasted, and the demand that dependents, defectives, and delinquents shall be trained, protected, and reformed. Our laws recognize these interests. So also do the laws recently enacted providing for the rehabilitation of the maimed. Under the social interest in general progress he classifies interest in economic progress, in political progress, and in cultural progress. Under the last he classifies two different forms, (a) the interest which demands that the individual will shall not be subjected arbitrarily to the will of another and (b) the interest resulting in the policy that all restraint and legal

¹⁴ Pound, "A Theory of Social Interests," *Publications of the American Sociological Society*, XV, 32

enforcement of the claims of others shall leave secured to the individual the possibility of a human existence.

Sociologically these interests are more or less clearly conceived by society, and any act which threatens their realization calls out repressive measures. Hence, it is not difficult to see the relation of what we call crimes to this classification of interests. The law on the one hand expresses the will of the dominant group to conserve the integrity of these fundamental social interests. Moral and conventional taboos are other methods of expressing society's determination to safeguard them. In the light, then, of these social interests consciously held by society and defended by the various means of control, such as punishment, moral restraint, and conventional repressions, into what classes may crime be divided?

1. Crimes against Property. Growing partly out of interest in the general security, partly out of group interest in the welfare of the individual, and partly out of the social interest in the security of social institutions are the crimes against property. While historically crimes against private property have been looked upon as an individual matter, so that the wronged man revenged himself upon the aggressor as he might, very soon it was dimly seen that the matter is of social concern as well. The lone individual might not be able to secure return of his property or compensation for it. Moreover, even if he availed himself of the assistance of his kindred, feuds might arise which threatened the general security. Hence, the whole group took matters into its hands and made some attempt to repress such acts. As ways of doing business became more complex and economic devices were invented, the range of crimes against property enlarged and the protective or repressive measures multiplied.

2. Crimes against Public Peace and Order. The crimes of treason, sedition, disturbance of the public peace, and disorderly conduct developed partly out of demand for the general security and partly out of the interest of the group in the stability of institutions. As soon as men clearly saw that only in the stability of the group did an individual have any guarantee for his own safety, the security of the group became a matter of paramount importance. Acts which threatened the peace of the group and the established order of society were condemned and visited with what was considered appropriate punishment. As the complexity of social life increased, more and more kinds of conduct were believed to threaten this interest and so were outlawed.

3. Crimes against Religion. In early societies these crimes arose out of the feeling that conduct which offended the deity threatened the general security. Among primitive peoples so close was the connection between the

god and the welfare of the community believed to be that it was felt that any offense to deity involved menace to the welfare of the whole group. Primitive religious rites were often conceived of as a means of establishing communion or fellowship between the group and its god. Men and the gods were members of the same blood group, that is, they were kindred. If famine, pestilence, disaster in war, or other evils came upon the group, it was a sign of the god's anger. Sometimes the communion between the god and his human fellows could be established by a sacrificial meal, but often only by the sacrifice of the offender himself.¹⁵ Sometimes the impiety was wiped out by destroying not only the culprit himself but all of his kindred as well.¹⁶ Says Pound, "Sacrifice of the impious offender who has affronted the gods and excommunication of the impious offender whose presence threatens to bring upon his fellows the wrath of the gods are in part at least the originals of capital punishment and outlawry."¹⁷ While in later times the close connection between offended deity and the group threatened with disaster is less close, nevertheless there yet remains a conviction in many quarters that impiety against God is a menace to the general security.

Furthermore, apart from the active fear of the social results of acts of impiety, in both primitive and modern societies custom and tradition count heavily. It is felt that impious acts threaten venerable institutions like the church; therefore such conduct is punishable. When religious institutions align themselves with morals, the social interest in general morals makes conduct which affronts religion criminal.

4. Crimes against the Family. Such crimes include not only bigamy, embezzlements of estates, and such like, but also kidnapping, illegitimacy, adultery, neglect of children, desertion of family, neglect to provide, and certain aspects of prostitution. Any conduct which threatens the stability of the family tends to become a crime when society becomes conscious of the social interest in domestic institutions. That there is difference of opinion as to whether certain acts connected with sex should be classified as crimes or simply as vices is due to the question as to whether the act is charged with a social interest. It is sometimes claimed that sexual vice is a matter which concerns only the person or persons addicted to such vices. However, whenever conduct affects society's interest in the family institution or its interest in the individual to such a degree that it is believed to endanger that interest, society makes that conduct a crime. That is why, as society comes to see that some of its interests are endangered by prostitution or

¹⁵ See Robertson Smith, *The Religion of the Semites* (London, 1901), pp 254-258

¹⁶ II Samuel, 21.1; I Samuel, 2:27 sq, Joshua, 7 1, 11

¹⁷ *Op. cit.*, p 36.

drunkenness, it places such conduct under positive ban. So it has come about that the labor of women at certain periods and under certain conditions which prevent their proper attention to the care of their families is forbidden with penalties. Once a man could abandon his wife and children with impunity, to-day if he does so he is subject to punishment. Very early adultery became punishable conduct, partly because society saw that one of its fundamental institutions was thereby endangered.

5. **Crimes against Morals.** Certain moral sentiments develop in the history of human society. How they develop is not our present concern. Certain of these moral sentiments become of such interest to the whole group that conduct which outrages them is made a crime. It is felt that the protection of these sentiments is of sufficient importance to demand positive protection through penal methods. For example, cohabitation with any near relative or with certain relatives of near relatives and sodomy were forbidden by the Levitical legislation.¹⁸

The laws to be found on the statute books of some States to-day against women wearing men's clothes and vice versa in part grew out of society's interest in general morals. That in some cities people going to or coming from bathing beaches are compelled to wear clothing over their bathing suits comes from the same social interest. Legislation against those who send obscene matter through the mails, the regulation of performances in theaters and of prize fights, and all laws aimed against the corruption of public morals rest on the same social grounds. Whenever society feels that its interest in the general morals of the people is threatened by certain acts, it proceeds to make such conduct criminal.

6. **Crimes against Conservation of the Resources of Society.** When society becomes self-conscious enough to recognize menaces not only to its own immediate welfare but also to the welfare of future generations, it proceeds to visit punishment upon those who waste natural resources. Hence, acts of this kind are made criminal acts. This social interest is manifested in the prohibition of such acts as cutting unripe timber in forest preserves, taking fish and other game out of season, wasting water from an irrigation ditch, wasting natural gas and oil, and other similar acts.

Out of the same class of interests grow such modern crimes as neglect of children either as to their health or as to their education and moral training. The whole body of crimes against public health—for example, breaking quarantine, refusal to have a child treated for sickness, and contributing to the delinquency of a minor—belongs to this class. While some of these acts spring from other social interests, such as interest in general morals, in the

¹⁸ *Leviticus*, 18 6-23; 20.11-15

stability of the family, and in the individual, society is in part moved to make such conduct criminal by its interest in the future of the race. Doubtless as time goes on other acts which now are not looked upon as injurious to the welfare of society will be added.

Thus, out of the recognized interests of society in various fundamental aspects of life come the prohibitions and punishments imposed upon conduct which is believed to be inimical to those interests. These acts we call crimes. Criminal conduct for this reason shades from the well recognized and anciently established to that which has but recently been recognized as contravening social interests. This explanation also enables us to understand why crimes change from age to age and differ from people to people. Whenever society comes to believe that conduct which was once held to menace any of these consciously recognized interests no longer actually menaces them, it ceases to punish. Whenever it believes that a kind of conduct which was once thought to be indifferent to the welfare of the group actually threatens some of these cherished interests, it applies repressive methods, and that conduct becomes criminal. Thus, crime is a changing concept, dependent upon the social development of a people, that is, upon the fundamental interests dominating their common thought.

QUESTIONS AND EXERCISES

1. What is the difference between a legal and a sociological definition of crime?
2. What is the difference between the definition of Garofalo and that of the text?
3. Why can we not define crime as "any act which is socially harmful"?
4. What is the essential sociological difference between vice and crime? between sin and crime?
5. Classify under the categories named in the text the following crimes: (1) fishing out of season, (2) gambling; (3) adultery, (4) desertion of family; (5) assault and battery; (6) manslaughter by running over a man with an automobile, (7) murder for revenge, (8) embezzlement; (9) selling contaminated milk, (10) defamation of character.

CHAPTER III

THE EXTENT AND COST OF CRIME

HOW serious is the problem of criminality? Have we any measure of its volume? What are the different kinds of crime of which individuals are guilty? Which of these varieties is the most serious? If we can answer such questions even approximately, we shall be able better to appreciate the struggle which society is making against crime, and to weigh the importance of the problem. Perhaps an attempt to state the problem in statistical terms is worth the effort, even if our figures are not as satisfactory as we could wish.

There is no country which collects accurate statistics as to the number of crimes committed. Fairly good statistics of the arrests in England and Wales are published. Several other European countries also provide an approximation to the total number of arrests for various crimes. In the United States before about 1928 the only statistics on a nation-wide basis were those of commitments to penal and correctional institutions and the population in those institutions on a given date, published about once in ten years. Since then the Bureau of the Census has been publishing figures every year for State and Federal institutions only. About 1927 the International Association of Chiefs of Police began to publish uniform crime reports. Their collection and publication have been taken over by the United States Bureau of Investigation of the Department of Justice. To date, however, these reports cover areas including less than half of the population of the country. A few States collect statistics for the State as a whole. However, from these various sources we may gather some conception of the extent and cost of criminality, the delinquencies which are most frequent, how they vary with age, sex, occupation, season, nationality, education, and civil condition, how society is reacting to anti-social conduct, whether crime is increasing or decreasing—in short, the criminal physiognomy of present-day society.

In the United States. While we have no accurate statistics on the number of crimes committed in the whole United States or an accurate record of any particular form of crime, the figures published by the Bureau of the Census and by the Department of Justice at Washington, and certain

studies by private persons, give us some approximation to the extent of crime in this country.

Take homicide for example. While the figures published by the Bureau of the Census on commitments to institutions in the United States give no adequate idea of the extent of criminal homicide, they have some value in comparing that crime by geographic area, by color, nationality, age-group, etc. Much more valuable are the data to be found in the mortality statistics published by the same bureau, in which are the figures for the number of deaths by homicide in the registration area in the United States. Not all of these, however, are criminal homicide.

On the other hand, the *Uniform Crime Reports* published by the United States Bureau of Investigation are valuable in that they give the number of homicides known to the police. Their reports, however, in 1932 were from only 1,546 cities containing only 52,802,362 people. For the first nine months of 1932 in 1,193 of these cities, with a combined population of 45,900,731, there were 3,804 felonious homicides, or 8.3 per 100,000 of the population.¹ Frederick L. Hoffman has given more attention to the subject in the United States than any one else. He estimates that annually there are about 12,000 homicides.²

If we consider commitments for all forms of crime, a remarkable situation appears. In 1933, 351,670 men, women, and children were locked up in penal and correctional institutions in this country. This is no adequate measure of the amount of criminality, since many of the criminals escape arrest and conviction.³ Nevertheless, even on this basis one out of about every 300 persons in the United States is put in jail or prison every year. The figure given does not take into account those who are arraigned in court and are acquitted, discharged, given suspended sentences, or put on probation. It ought to be added that the great majority of these persons are committed to minor penal institutions such as jails. Only about 10 per cent are sent to what may be called the "higher institutions of crime."

From January 1 to September 30, 1932, the police of 1,193 cities with a total population of 45,900,731 reported as known to them a total of 552,355 offenses. The following table shows the distribution of these offenses.⁴

¹ *Uniform Crime Reports*, Vol III, No 3, Third Quarterly Bulletin, 1932 (Washington, 1932), p 4.

² Hoffman, *The Homicide Problem* (Newark, New Jersey, 1925), pp 3, 94. See also Bearly, *Homicide in the United States* (Chapel Hill, North Carolina, 1932), Chap II.

³ *Prisoners in State and Federal Prisons and Reformatories*, 1933, and *Prisoners in County and Municipal Penal Institutions*, 1933, Bureau of the Census, *Newspaper Releases*, October 10, 1934, and September 11, 1934.

⁴ *Uniform Crime Reports*, Vol IV, No. 4, Fourth Quarterly Bulletin, 1934 (Washington, 1934), p 4.

OFFENSES KNOWN TO THE POLICE, JANUARY TO DECEMBER INCLUSIVE, 1933;
NUMBER AND RATES PER 100,000 OF POPULATION

TOTAL STATISTICS FOR 1,264 CITIES WITH A POPULA- TION OF 49,470,686	FELONIOUS HOMICIDE		RAPE	ROB- BERY	AGGRA- VATED ASSAULT	BUR- GLARY, BREAK- ING OR ENTER- ING	LAR- CENY (THEFT)	AUTO THEFT
	<i>Murder,</i> <i>non-negli-</i> <i>gent man-</i> <i>slaughter</i>	<i>Man-</i> <i>slaughter</i> <i>by negli-</i> <i>gence</i>						
Number of of- fenses known.	3,514	2,285	2,922	50,719	25,082	187,583	374,662	158,508
Rate per 100,000	71	4.8	59	102.5	50.7	379.2	762.0	320.4

Approach the problem in another way. Start with the 351,670 committed to all of our penal and correctional institutions in 1933. If we assume with ex-Governor Hadley of Missouri that only 10 per cent of those committing felonies are apprehended and that the same rate applies to those who commit any crime, then we should have three and a half million offenders in this country every year, about 3 per cent of the population. The New York Crime Commission in 1928 estimated that 1 per cent of the population commits some crime.⁵ In spite of the fact that the majority (about 89 per cent) of the offenses committed by this large number are the less serious crimes, it must not be forgotten that an army of 127,495 was in the custody of the State and Federal prisons and reformatories on January 1, 1931, and further that over three-fifths as many (78,866) were received into these institutions during that year.⁶

In England and Wales. In 1930 in England and Wales there were 147,031 (369.4 per 100,000 population) indictable offenses, including murder and other offenses against the person, offenses against property (with or without violence), larcenies, forgeries, etc., known to the police. For non-indictable offenses, by which term is indicated what in England are classified as criminal and non-criminal offenses (the former including assaults, cruelty to animals, malicious damage, unlawful possession, and other miscellaneous crimes, the latter including acts against the Elementary Education Acts,

⁵ *Bulletin, New York State Bar Association*, March, 1930, p. 127; *From Truancy to Crime: A Study of 251 Adolescents*, Crime Commission of New York (Albany, 1928), p. 8.

⁶ *Prisoners in State and Federal Prisons and Reformatories, 1929 and 1930*, Bureau of the Census (Washington, 1932), p. 2. A valuable critique of the present chaos of criminal statistics in the United States is *Report on Criminal Statistics*, No. 3 (April, 1932), National Commission on Law Observance and Enforcement (Washington, 1931), pp. 19-205, the *Survey of Criminal Statistics in the United States* by Sam B. Warner, National Commission on Law Observance and Enforcement, No. 3.

drunkenness, offenses against the Highway Acts, sanitary laws, and police regulations, and vagrancy), 609,670 persons were proceeded against. Of the non-indictable offenses, 278,229 were for violation of traffic ordinances.⁷ In 1930 the number of crimes known to the police was greater than ever before.

Hobhouse and Brockway state that for the five years ended 1913-14, there were 437.5 prisoners to each 100,000 of the population in England; for the five years ended 1918-19, 157.4, for the year 1919-20, 98.4; and for the year 1920-21, 116.7. These figures give us not a crime rate, but a prisoner rate.⁸ In 1930 the prisoner rate was still declining due to the use of probation and the use of short sentences.

In Germany. In Germany during 1929 there were 593,707 convictions exclusive of those convictions for offenses against military law. That number gives a rate of 1,190.53 per 100,000 persons of punishable age in the total population. The rate for all males was 2,146 and for females it was 314, while for juveniles the rate was 517. In each case the rate is based upon 100,000 persons in a given category—males, females, or juveniles. Out of the total number convicted, 593,707, a total of 211,755 had been convicted before, while 61,449 had been convicted more than four times before.⁹

In order that one may see what had happened in twenty years in Germany the number of people tried for crimes or offenses in 1909 may be compared with the number tried in 1929. In the former year there were 797,112 persons tried, in the latter, 706,857. In 1909 there were 248,648 thefts, frauds, and embezzlements, in 1929 there were 255,613 crimes and offenses against property.¹⁰

The Excessive Criminality of the United States. All the figures obtainable show that the United States has an unenviable preëminence in the matter of criminality. If we compare the cities of the United States with the cities of Great Britain and with the cities of the Continent, the rate of criminality before the World War was very much higher in the United States.

Thus, Chicago, one-third the size of London, in 1916 had 105 murders as compared with London's nine, nearly thirty-six times as many on the basis of population. Chicago's murders in 1916 totaled more than London's during the period from 1910 to 1914 inclusive. During that same year Chicago,

⁷ *Criminal Statistics England and Wales, 1930*, Cmd 4036, p. vii.

⁸ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 4.

⁹ *Kriminalstatistik für das Jahr 1929*, Statistik des Deutschen Reich, Band 398, s. 6.

¹⁰ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp. 223-225.

with only 2,500,000 people, had twenty more murders than the whole of England and Wales with 38,000,000. Comparing cities of about the same size at that time, Fosdick found that Glasgow had thirty-eight homicides during the period 1916-18, while Philadelphia had 281. In 1915 St. Louis had eleven times the number of homicides of Liverpool, and in 1916 eight times the number.

Much the same situation exists in the other cities of the United States. In 1916 New York had six times the number of homicides (murders and manslaughters) of London for the same year, and only ten less than all of England and Wales. Los Angeles, one-twentieth the size of London, had two more homicides in 1916 than London, while in 1917 she had ten more. Cleveland, Ohio, one-tenth the size of London, in 1917 had three times the number of homicides of London, twice the number in 1918, and six times the number in 1920. For every robbery or assault with intent to rob in 1920 in London, there were seventeen such crimes committed in Cleveland. Cleveland had as many murders during the first three months of 1921 as London had during all of 1920. Liverpool, then about one and one-half times as large as Cleveland, in 1919 had only one robbery for thirty-one in Cleveland, and only one murder and manslaughter as compared with Cleveland's three. Every year in Cleveland there are more robberies and assaults to rob than in all England, Scotland, and Wales put together, and when compared with other American cities, Cleveland's record does not appear to any special disadvantage. During 1921 St. Louis had 481 robberies, while Cleveland had 272. During the same period St. Louis had nearly twice the number of complaints of burglary and house-breaking.¹¹ According to the Chicago Crime Commission, Chicago had 330 murders in 1919, 110 to the million population, while Great Britain had only nine to each million of its population, and Canada but thirteen.¹²

Possible causes for this greater criminality in the United States will be considered in our next chapter. The excess may be due partly to a difference in the way we handle crime, as compared to methods used in England and Canada.

¹¹ Fosdick, *American Police Systems* (New York, 1920), pp. 10-17; Fosdick in *Criminal Justice in Cleveland*, Cleveland, Ohio, 1922, pp. 3, 4.

¹² Chamberlain, *Journal of Criminal Law and Criminology*, XI, 22 (May, 1920). The greater proportion of arrests are for minor crimes. For example, in Chicago from 1910 to 1921, arrests for felonies constituted only from 10.2 per cent to 16.2 per cent of all arrests. Abbott, *Journal of Criminal Law and Criminology*, XIII, 331 (November, 1922). Miss Abbott has also called attention to the fact that the Crime Commission's figures are much higher than those of the Police Department (330 as compared with 154) and that the Commission in its report gives no source for its figures. *Ibid.*, p. 352.

THE COST OF CRIME

We are even more at sea with respect to the cost of crime. Only some general statements can be made concerning the money cost.

There is no question that society's attempt to repress crime and to catch, try, and guard the criminals is a financial burden to the honest people of every country far beyond what most people imagine.

In the United States. In 1910 Warren F. Spalding, Secretary of the Massachusetts Prison Association, estimated that the detection, conviction, and punishment of crime requires more than one-tenth of all the money raised by taxation for all purposes. The only single expenditure in the State of Massachusetts which equaled that for crime was that for education.¹³ Some conception of the enormous burden which crime entails upon the taxpayer, to say nothing of the victims of criminal activities, may be gained from some recent estimates by the National Commission on Law Observance and Enforcement. The following table built up from figures given in a report of the commission just referred to, while its authors declare it to be incomplete, gives us some conception of the economic burden of crime, although an inadequate one.¹⁴

Total Federal cost of criminal justice	\$ 52,786,000
(76.8% incurred in connection with enforcement of three Federal statutes the prohibition law, the anti-narcotic act, and the national motor vehicle theft act)	
State police forces in eleven States	2,660,000
State penal and correctional institutions and parole agencies	51,720,000
Private industrial police in Pennsylvania	1,260,000
Administration of criminal law for approximately 75% of 365 cities of over 25,000 population including 63.5% of the urban population of the country	247,700,000*
Private protective service in the larger cities (not complete).....	10,000,000
Private watchmen (not all for crime protection).....	159,000,000
Contributed by private persons and agencies to correctional treatment of delinquents	850,000
Armored cars	3,900,000
Known insured losses against property	47,000,000
Losses due to fraudulent use of the mails	68,000,000

* The commission estimates the total cost of criminal justice in the United States as considerably more than \$350,000,000

¹³ *Journal of Criminal Law and Criminology*, I, 86-102 (May, 1910).

¹⁴ *Report on the Cost of Crime*, No 12 (June 24, 1931), National Commission on Law Observance and Enforcement (Washington, 1931).

Cost of insurance against burglary, robbery, auto theft, etc.	106,000,000
Safes, chests, vaults, etc. (not entirely on account of crime)	4,227,000
Loss of productive labor of prisoners and law enforcement officers	300,000,000
Bullet-proof glass	311,000
Known incendiarism	2,000,000
Bank burglaries	1,800,000
Thefts from jewelers ..	2,000,000
Railway freight thefts ..	1,100,000
Forgeries ..	40,000,000

These figures, the authors of the report believe, give no adequate conception of the total cost of crime. They refused to total these amounts. There are many more items for which figures cannot be given, such as frauds, organized extortion, racketeering, losses from the lack of productive activity due to crime, arson, embezzlement, burglary, robbery, theft, and private expenditures for protection against criminals, such as burglar alarms, armored cars, and other devices.

The Employers Association of Chicago has estimated that the cost of rackets in that city alone amounts to \$136,000,000 a year.¹⁵ Estimates as high as \$13,000,000,000 have been made for the total cost of crime. But with the present knowledge it is only a guess.

IS CRIME INCREASING OR DECREASING?

For a number of years it has been a very serious question as to whether society is winning in its fight to control criminals. There has been quite a general feeling that crime is increasing in spite of all efforts to control it.

In the United States. For the United States we have no statistics on this point over a number of years except commitments to institutions. The table on the following page, comparing by years the rate of commitments of males and females for those crimes in which the rate has appreciably changed, is of some value.¹⁶

From an inspection of these figures it is apparent that so far as commitments to institutions are an index of crime there has been no increase among males in homicide and assault, and scarcely any in sex crimes other than rape or in the violation of drug laws. Assaults showed a decrease between 1910 and 1923, but with a tendency to increase from 1923 to 1930. All

¹⁵ Guenther, "The High Cost of Hoodlums," *Harper's Magazine*, October, 1929

¹⁶ Table prepared from *Prisoners in State and Federal Prisons and Reformatories*, 1927 (Bureau of the Census, Washington, 1931), p. 11, and *Prisoners in State and Federal Prisons and Reformatories*, 1929 and 1930 (Bureau of the Census, Washington, 1932), p. 70.

CRIMINOLOGY AND PENOLOGY

PRISONERS RECEIVED, 1910, 1923, 1926, 1927, 1928, 1929, 1930

OFFENSES BY MALES	RATIO PER 100,000 OF GENERAL POPULATION OF SAME SEX						
	1930	1929	1928	1927	1926	1923	1910
	105.5	95.3	86.9	81.6	77.5	61.9	55.5
All	105.5	95.3	86.9	81.6	77.5	61.9	55.5
Homicide	55	52	47	43	46	57	54
Rape	31	32	30	31	30	26	23
Robbery	116	90	82	71	68	51	26
Assault	46	42	39	38	38	32	55
Burglary	206	168	164	141	135	111	127
Forgery	68	62	61	56	50	45	34
Larceny and related offenses	262	236	233	232	217	148	163
Sex offenses except rape	78	2.3	23	22	21	20	1.7
Violating liquor laws	126	108	60	66	61	45	0.6
Violating drug laws	25	44	35	31	33	35	...
OFFENSES BY FEMALES *							
All	53	59	57	58	55	43	34
Burglary	02	02	0.1	01	01	01	01
Forgery	03	02	0.2	02	02	01	...
Violating liquor laws	06	07	05	05	05	03	...

* The other offenses by females show practically no change in these two decades

the other crimes for males show an increase. For females burglary, forgery, and violating liquor laws increased.

However, from such studies as have been made of homicides it is doubtful whether or not they have really increased. The study by Hoffman of homicides in twenty-eight cities seems to show an increase from 5.1 in 1900 to 10.3 in 1924. However, Sutherland, comparing the rates in the area covered by registrations in 1905, found the rate of 2.22 for 1905-09 had increased only to 2.86 in 1920-22. Moreover, he found that in 1922 twenty-nine out of sixty-one cities with a population of 100,000 or more in the death registration area had lower homicide rates than in 1912, while twenty-nine had higher rates and three had just the same. In the same year, of twenty-three States which were in the registration area in 1912, one had the same rate, eleven had higher rates, and eleven had lower rates. Thus, homicide rates had not appreciably increased in these sixty-one cities and twenty-three States. In addition it must be remembered that in the later years the statistics

of homicide were more complete and accurate than in the earlier years because doctors were becoming more familiar with registration practice and therefore were more likely to report homicides accurately. Moreover, the apparent increase of homicide rates in the census mortality figures may be due to the fact that the death registration area has increased by addition of territory in the West and South, where homicide is more frequent than in the older East. Therefore, while it is possible that there has been an increase in criminal homicide in the United States, it cannot with our present knowledge be proved.¹⁷

According to the preceding table there has been a small increase in commitments for rape, a decided increase for robbery, a decrease for assaults, a considerable increase for burglary, and a doubling for forgery between 1910 and 1930. There has also been an increase for larceny and related offenses and for violating liquor laws, but no increase for sex offenses other than rape, and a decrease for violating drug laws.

In addition to these statistics of commitments to institutions certain other data are at hand: figures on *arrests* in certain States and cities, and on cases coming before the courts. Gehlke and Sutherland have demonstrated that arrests aside from those for drunkenness and traffic violations show "in general a gradual rise from 1900 to 1925, broken by the downward dip of two of the curves in the period 1917 to 1920. The sharper rise after 1920 merely recovers the lost ground of the decline. After 1925 two of the curves tend to flatten out. Contrary to general belief, there is no evidence here of a 'crime' wave, but only of a slowly rising level."¹⁸ Even homicide, robbery, and burglary, the holy trinity of the sensational journalists' attention, behaved much the same as all other crimes.

Cases prosecuted in the Federal and certain higher State courts likewise, omitting auto offenses, drunkenness, and offenses against the prohibition law, show a similar tendency gradually to increase from 1900 to 1930 with a flattening-out of the curve in the later years.

The cases tried in the lower courts, largely misdemeanors, when the less serious cases are disregarded, show less of an increase than those tried in the higher courts. Still less evidence of a "crime wave."¹⁹

On the whole, then, the picture of the crime flux in the United States

¹⁷ Sutherland, "Murder and the Death Penalty," *Journal of Criminal Law and Criminology*, February, 1925, p. 522. Dr Hoffman's figures for twenty-eight cities show an increase of homicide cases from 51 in 1900 to 103 in 1924. However, his figures are for all homicides, not for criminal homicides only. Moreover, the census figures before 1905 were confessedly unreliable.

¹⁸ *Recent Social Trends* (New York, 1933), II, 1127, 1128.

¹⁹ *Ibid.*, pp. 1129-1133.

from 1900 to 1930 is that of a slight increase in the older and more serious offenses, a slighter increase with a tendency toward stability of the older minor offenses, and a great increase of the newer crimes whether considered serious or of minor importance. The new crimes, such as "racketeering," violation of the Volstead Act, and the older but recently more widely employed kidnapping and bombing have attracted wide attention. "Racketeering" is not new but is better organized and more widespread than formerly. A form of levying tribute ostensibly for protection against competitors but really against the protected, it has had enormous growth in the last few years, accompanied by bombing or other violent means of enforcement of demands. Likewise kidnapping, although an old crime, has recently been greatly developed as a means of extortion. Violation of the liquor laws has increased tremendously by reason of the enactment of the Volstead Act and the serious attempt to enforce it. ("Without law there is no crime.") Moreover, the passage of the Dyer Act making the transportation of a stolen automobile across State lines a Federal offense created a new legal crime which, of course, then first appeared in the statistics and with the growth in the number of motor-cars shows an increase. The widespread use of the auto also has made easier the work of the robber, the burglar, the kidnapper, the bootlegger, the hijacker, and the gangster. The results appear in the statistics of crime committed by all these criminals. The wonder is that the curves of crime do not show greater increases. It will be remarkable if the economic depression does not bring to light a great crop of embezzlers and fraudulent persons. Already some of our prisons have growing bankers' colonies.

In Germany. Aschaffenburg, writing of the situation in Germany shortly before the World War, was of the opinion, based upon a careful study of the German statistics, that serious crime there was on the increase.²⁰ The war and its aftermath disturbed the whole trend of events in Germany. Except for a brief period the industrial and commercial situation in Germany had been very bad. What had happened in respect to crime?

During my visit to the penal and correctional institutions of the four largest States in Germany in the summer of 1932 I was impressed by the lack of overcrowding there in contrast to the situation in most such institutions in the United States. The authorities said that while there had been some increase in the institutional population, it had not been great. Several of them explained the striking and unexpected situation on the theory that the "dole" had eased somewhat the otherwise pressing economic needs of the people, and that the organization of the young men in the Steel Helmet and

²⁰ *Crime and Its Repression* (Boston, 1913), pp. 215-216, 223.

Brown Shirt (Hitlerite) organizations had absorbed their attention and energies in the interest of Germany's welfare—a kind of patriotic psychology.

As in most of the warring countries criminal statistics in Germany showed a great decline during the World War. They reached their low point in 1916. They rose decidedly in 1918, and reached the astonishing height in 1923 of 823,902 convictions. Apparently this high number was the reflection of a very great increase in thefts, due to the bad economic conditions among the German people. With more settled conditions the rate per 100,000 persons of punishable age in the population fell from 633 in 1923 to 145 in 1928 for simple theft. Taking criminality as a whole from 1923 to 1930 there has been a decrease from 1,693 per 100,000 of the population of punishable age to 1,190 in 1930. This apparent decrease, however, Dr. von Hentig says is an "optical illusion," for while both simple theft and graver theft have decreased from 1920 to 1930, fraud has more than doubled per 100,000 of the population of punishable age. Robbery and extortion slowly decreased from 1921 to 1928 but increased again in 1929 and 1930. Incendiarism between 1919 and 1930 increased over fivefold. A similar tendency to increase is manifested by embezzlement and receiving stolen goods. On the whole it appears to this German scholar that the outlook for the decrease of serious criminality in Germany is not hopeful.²¹

In England and Wales. From the standpoint of crime the government of England and Wales is in the happy situation that she furnishes more than one index of the volume of crime. One need not be dependent upon the rate of commitment to institutions; one may go to the reliable records of arrests or, better, to the reports of crimes committed.

Were we to depend upon the statistics of the population of the various penal and correctional institutions in England we should inevitably decide that crime has decreased in that country. The following table is in point:

DAILY AVERAGE POPULATION OF INSTITUTIONS FOR CRIMINALS

	1911-12	1928
Local prisons	15,907	8,128
Borstal institutions	730	1,347
Convict prisons	3,082	1,491
Preventive detention	1	143
<hr/>	<hr/>	<hr/>
Total	19,720	11,109

²¹ von Hentig, "Sturmwarnung," *Monatsschrift für Kriminallpsychologie und Strafrechtsreform*, 24 Jahrgang, 1 Heft (Januar, 1933), pp 1-5

Thus in sixteen years the daily average of prisoners in the various institutions was almost cut in half. The explanation of the English census authorities is that this decrease is due to the growing use of probation and to the imposition of shorter sentences during recent years²²

The criminal statistics of England and Wales, however, provide us the number of offenses committed in that Kingdom and give us quite a different picture. Indictable offenses in England include the more serious forms of crime. In 1882 the rate of indictable offenses known to the police was 380.7 per 100,000. From that year to 1889, the first year of the Boer War, there was a gradual fall to 239.3 per 100,000. This was the greatest decrease known in the criminal statistics of England. After the Boer War there was a gradual rise which culminated in 1908 with an incidence of 297.8 per 100,000. Then there was a fall to 269.5 in 1910 to 1914. During the World War, 1915-19, there was a further decline to 251 per 100,000. After the war the average incidence from 1920 to 1924 inclusive was 279.9. In 1925 it rose to 293.1 and in 1926, the year of the general strike, to 341.6. It fell in 1927 to 319.9 and rose in 1928 to 330.4, in 1929 to 339.8, and in 1930 to 369.4. The report indicates that the greater part of the increase was due to an increase in number of recorded crimes against property in 1930.²³ It is apparent, therefore, that in spite of the decrease in criminal population in institutions there has been some increase in offenses since the World War.

PROPORTION OF EACH CLASS OF CRIME

What part does each of the various classes of crime play in the total of criminality?

In England and Wales. In 1930 in England and Wales the total number of indictable offenses known to the police was 147,931. The total number of persons dealt with for non-indictable offenses was 609,670. Of these non-indictable offenses 23,881 were of a criminal character. If we divide the total of indictable and non-indictable offenses into criminal and non-criminal, 22.6 per cent of the offenses in 1930 in England and Wales were criminal, while 77.8 per cent were non-criminal. We must remember that in England and Wales criminal and non-criminal offenses are legal classifications²⁴

There is no information in the English statistics at the present time

²² *Criminal Statistics, England and Wales, 1928*, Cmd 3581, Introductory Note, p. lvi

²³ "The Offender and the Community before the War and Since," *Criminal Statistics, England and Wales, 1928*, Parliamentary Papers, Vol. 30, Session 1929-30; *Criminal Statistics, England and Wales, 1930*, Cmd 4030, p. vi

²⁴ *Criminal Statistics, England and Wales, 1930* (London, 1932), pp. vii, xv

indicating the percentage of the various types of crime. About 1922 in England crimes against the person constituted practically 8 per cent, those against property 18.5 per cent, and other offenses 73.5 per cent. Of the last, about nine tenths of the offenses against the person are non-indictable assaults often occasioned by drink.²⁵

In Canada. Since 1900 in Canada there has been a great increase in convictions for criminal offenses, rising from 188 on the basis of 100,000 population in 1900 to 410 in 1930. The increase was not regular, showing a decline in 1915 during the war, with a low point in 1917. There has been a decided upward trend since 1926. Total criminal convictions rose from 41,654 in 1900 to 345,641 in 1930.

On the other hand, for the last three years the trend has shown that the criminal offenses have constituted less and less of the total number of offenses—in 1900 24 per cent of all convictions, while minor offenses constituted 76 per cent. In 1930 criminal offenses constituted only 11.8 per cent of all convictions, and minor offenses accounted for 88.2 per cent.²⁶

In the United States. Of the total number of commitments to institutions in the United States from January 1 to June 30, 1923, 25.3 per cent were for drunkenness, 14.8 per cent for disorderly conduct, 11 per cent for violating liquor laws, and 7.8 per cent for vagrancy. These four crimes account for 58.9 per cent of all institutional commitments. Next in rank came larceny with 7.7 per cent and assault with 3.5 per cent. None of the other offenses for which persons were committed was responsible for more than 2/10 of 1 per cent of the total commitments.²⁷

RECIDIVISM

One of the most serious problems is that of the criminal repeater. It is serious not only because it reflects upon our methods of treating the delinquent but also because it raises the important question of why individuals who have fallen into crime and have suffered punishment are not thereby deterred from a repetition of the offense, and thus it leads us into the problem of causes.

It is difficult to ascertain the extent of recidivism chiefly because of our inefficient methods of identification and of recording facts about criminals. A man may change his name or may go from one State to another. We have

²⁵ Hobhouse and Brockway, *English Prisons Today* (London, 1922).

²⁶ "Judicial and Penitentiary Statistics," *The Canada Year Book* (Ottawa, 1932), pp. 900, 901.

²⁷ *Prisoners: 1923* (Washington, 1926), p. 33. This is the latest census report which tabulates the commitments to all penal and correctional institutions.

made only a beginning in providing the means whereby when he is arrested we can ascertain whether or not he is a repeater. Not all penal and correctional institutions send finger-prints to Washington. Many police departments and sheriffs do not seek the aid of the Bureau of Criminal Investigation in the Department of Justice at Washington to learn whether the arrested person has a history of previous conviction on record there.

The Bureau of the Census provides some information on recidivism. In 1928 of prisoners committed to State and Federal prisons and reformatories to the total number of 48,212, information was obtainable as to previous commitment on 29,294, or a little more than half. Of these whose records were known 43.5 per cent were first offenders, while 56.5 per cent were recidivists. Of the total 29,294, 20.9 per cent had not been previously committed to prisons or reformatories but had records of commitment to jails, workhouses, etc., while 35.6 per cent had previously been committed to prisons or reformatories. It must be remembered, however, that since many of the prisons and reformatories do not use the services of the State and Federal identification bureaus, this picture of the situation is inadequate. The probabilities are that the percentage of the total number received during that year who had experienced prison, reformatory, or jail was very much higher.²⁸

The study by the Census Bureau in the previous year showed that on the basis of these figures those convicted of violation of drug laws (63.8 per cent) and those convicted of burglary (54.7 per cent) had the highest percentages of recidivists. Those convicted of several other crimes, however, had high rates, among them robbery (47.1 per cent), forgery (47.1 per cent), larceny and related offenses (45.9 per cent), having stolen property (51.1 per cent), and carrying concealed weapons (46.1 per cent).²⁹ Of all persons committed to all institutions during the first six months of 1923, 50.5 per cent of all offenders and 46.8 per cent of those committed to jails and workhouses were recidivists.³⁰

A more accurate picture of the situation perhaps may be obtained by looking at the results of studies of this matter in particular institutions and the institutions of certain States. In Massachusetts of 305 persons sentenced to the State prison for the year ending November 30, 1931, 59 per cent had previously served sentences: 20.6 per cent had served one previous sentence, 17.7 per cent two, 9.8 per cent three, 3.6 per cent four, and 3.6 per cent five

²⁸ *Prisoners in State and Federal Prisons and Reformatories: 1928* (Bureau of the Census, Washington, 1931), pp. 21, 22.

²⁹ *Prisoners 1927* (Bureau of the Census, Washington, 1931), pp. 21, 28.

³⁰ *The Prisoners' Antecedents* (Bureau of the Census, Washington, 1929), p. 40.

sentences. For the same year, of the admissions to the Massachusetts Reformatory for men 55.5 per cent were recidivists. At the State Farm the recidivists comprised 86 per cent of all admissions.³¹ Out of 510 men who had left the Massachusetts Reformatory between the years 1911 and 1922, 80 per cent were not reformed five to fifteen years later.³²

Every study of prisoners shows a high percentage of recidivism. A former head of Scotland Yard in London some time ago wrote that nine tenths of the serious crimes of that city were committed by repeaters and that if they could be eliminated serious crimes would be appreciably reduced.³³

Formerly it was thought that recidivism was linked with abnormal mental and personality conditions.³⁴ Goring thought he discovered among the English convicts he studied that "with increasing degrees of recidivism there is a small but nevertheless regular regression in the mean intelligence of convicts."³⁵

More recent studies of the problem have given diverse results as to the relation between intelligence and violation of parole or between intelligence and recidivism.³⁶ Sutherland reports that a study of 1,288 inmates of thirty-four county jails and penitentiaries in New York in 1925 showed a higher percentage of mental deficiency among those arrested twice or oftener than those who had been arrested but once and that in Rhode Island a higher proportion of defectives was found among recidivists than among first offenders in the State prison, the industrial school, and the county jail but a lower proportion in the house of correction. On the other hand, Fernald, Hayes, and Dawley found no significant relationship between intelligence and recidivism among the women in the Bedford, New York, reformatory. Murchison, in a study which excited a great deal of discussion, claimed that recidivists were more intelligent than first offenders. However, on a further analysis he concluded that first offenders guilty of fraud and sex offenses are more intelligent than recidivists and that those convicted of statutory offenses, like the illegal sale of drugs or liquor, the possession of burglar tools, etc., are less intelligent, while both first offenders and recidivists convicted of other crimes are practically identical in intelligence.³⁷

³¹ *Annual Report of the Commissioner of Correction for the Year Ending November 30, 1931* (Boston), pp. 48, 49.

³² Glueck, Sheldon and Eleanor T., *500 Criminal Careers* (New York, 1930), p. 190.

³³ Cited by Hopkins, "Criminals and the Law," *Journal of Criminal Law and Criminology*, II, 69 (May, 1911).

³⁴ Ordahl, "A Study of 53 Male Convicts," *Journal of Delinquency*, I, 13 (Mar., 1916).

³⁵ *The English Convict* (London, 1913), p. 271.

³⁶ Vold, *Prediction Methods and Parole* (Hanover, N. H., 1931), p. 33.

³⁷ "Report of the Committee on Psychopathic Delinquents," *Report of the Commissioner of Prisons of New York* (Albany, 1925); *Rhode Island Mental Hygiene Survey*,

The seriousness of repeating from the standpoint of the criminal cannot be exaggerated. The strange thing about it is that, when relapse takes place, methods of treatment prove to be increasingly inefficient. Says Aschaffenburg, "Whoever has once got deep into the mire of criminal life is scarcely able to get on firm ground again. It is quite certain, however, that our penalties are ineffectual, in so far as they are intended to deter from relapse. The oftener efficacy of punishment has been tried on an individual, the less can we hope for success from this means."³⁸ This is more serious, of course, when the repeater is a juvenile. What would we say about the diagnosis of a disease and the methods of treatment applied if with every succeeding treatment the patient became more hopelessly ill? While the analogy is not perfect between sickness and crime, it is suggestive.

The situation this brief survey presents is not pleasant to contemplate. The extent of crime as indicated above is serious. It is a disconcerting fact that certain crimes seem to be increasing and that new forms of crime baffle for the time being the efforts of society to control them. Serious, also, is the number of homicides in the United States, and of the very greatest significance is the large proportion of those who were committed to our correctional institutions who have been committed before. Recidivism is as serious a challenge as the large number of offenders. Perhaps the part of the picture which stands out most vividly is the enormous cost in money which crime entails upon a society. It appears that we spend more on our struggle with criminals than on any other one thing except education and good roads. By an irony of fate good roads and science furnish the criminals with their most approved means of committing crime and escaping.

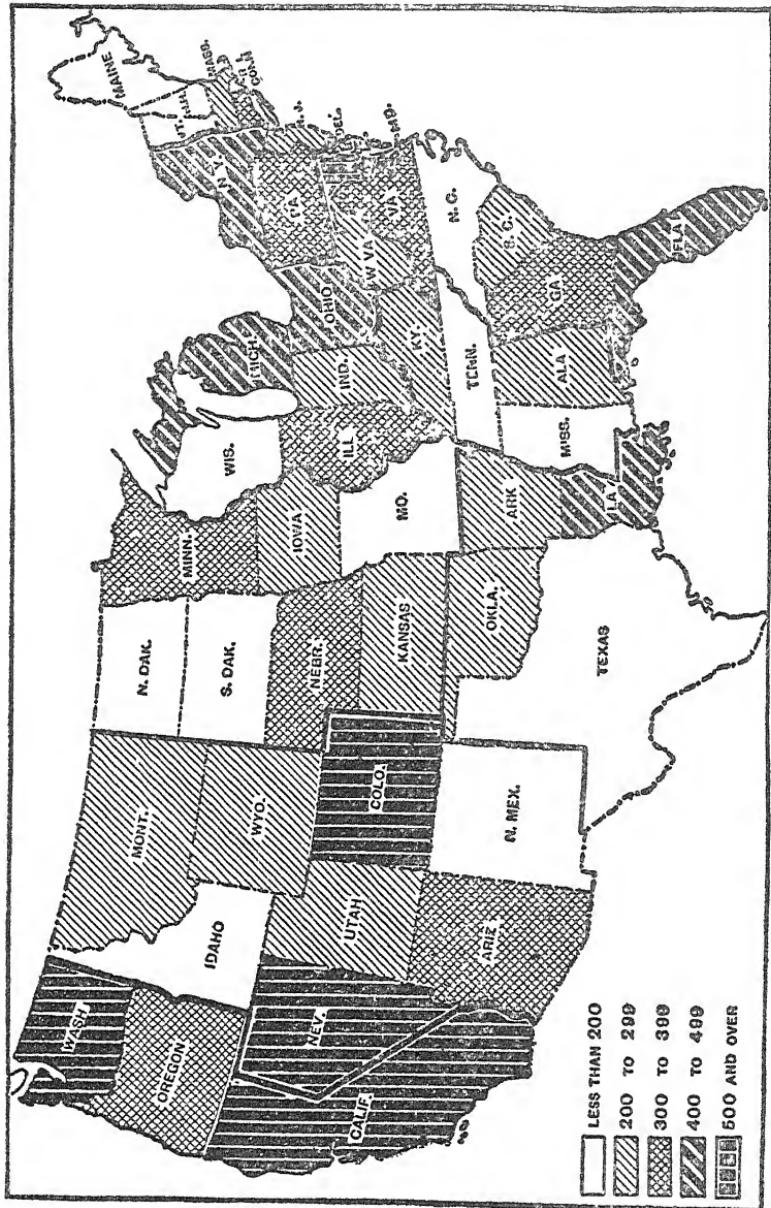
QUESTIONS AND EXERCISES

- 1 What is a crime rate? What is a homicide rate?
- 2 Explain the high rate of criminality of the United States
- 3 Explain the apparent decrease of crime in Great Britain
- 4 Are the criminal statistics at present available a fair index of the amount of crime in the country? Why?
- 5 Compare the amount of money spent on account of crime with that spent upon such constructive services as education and health
- 6 What would be a discriminating reply to a statement that crime is increasing in the United States? in England? in Germany?
- 7 Point out the offenses which according to the census statistics have increased from 1910 to 1930. Those which have decreased

¹⁹²⁴; Fernald, Hayes, and Dawley, *A Study of Women Delinquents in New York State* (New York, 1920), pp. 468 ff., Sutherland, "Mental Deficiency and Crime," in Young, *Social Attitudes* (New York, 1931), Chap. XV

³⁸ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), p. 222

8. Is there any truth in the newspaper contention that there has been a crime wave in the United States? Explain what has happened
9. Discuss the proposition that the division of crimes into more serious and less serious is a sociological phenomenon growing out of the beliefs of the group
10. Why is recidivism a serious sociological matter? Discuss the proposition that recidivism reveals the inadequacy of our methods of treating the convicted criminal, that recidivism is a product of our whole social and economic organization, not simply of the treatment of the convicted offender.
11. What does the evidence show as to the connection between the level of intelligence and recidivism?

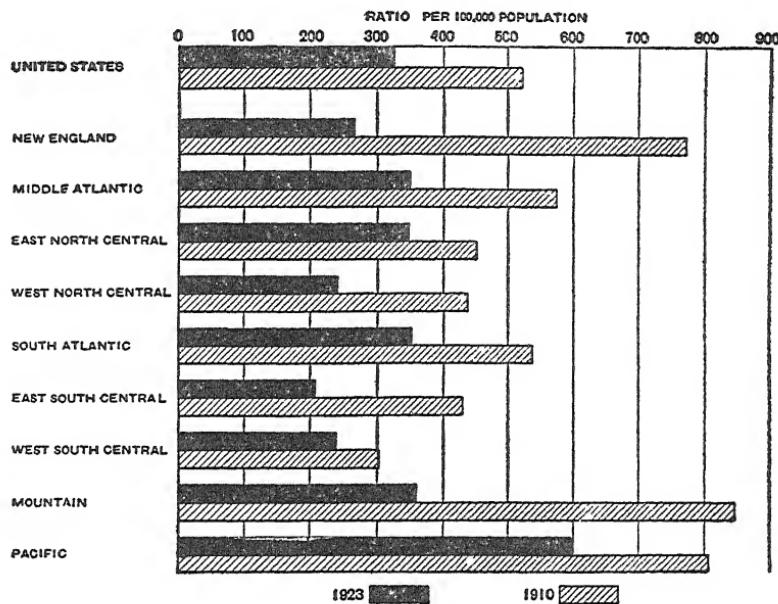


CLASSIFIED COMMITMENT RATIOS PER 100,000 POPULATION, BY STATES. 1923

CHAPTER IV

THE PHYSIOGNOMY OF CRIME

WE speak of a man's physiognomy. By that term we mean his general appearance. We apply the term more widely to describe the general appearance or fashion of a landscape, a homestead, or a people. If we attempted to describe the physiognomy of this campus, we should point out the general features—the lay of the land, whether hilly or level, the trees and the grassy spaces, the buildings and their distribution, etc. We do not pretend to reveal causes by describing the physiognomy of anything, although such a description may provide the foundation for a study of causation.



COMMITMENT RATIOS BY GEOGRAPHIC DIVISIONS 1923 AND 1910

By the physiognomy of crime, then, we mean a general picture of criminality at a given time and within a given country. In the United States the only information of approximately accurate nature is to be found in the

census reports. These facts, however, relate only to those who have been committed to some institution for delinquents. Inadequate as it is, however, this information will give us the best picture possible in the light of our present knowledge.

Geographic Distribution. In the United States crime, measured by commitments to institutions, varies from State to State. The map on page 38 from the report of the Bureau of the Census, *Prisoners: 1923*, shows the variation in that year. This map pictures the commitments to all institutions—to jails as well as to prisons and reformatories.

The commitment ratios for the various geographic divisions in 1910 and 1923 are represented by the graph on page 39 from the Report of the Bureau of the Census, *Prisoners: 1923*.

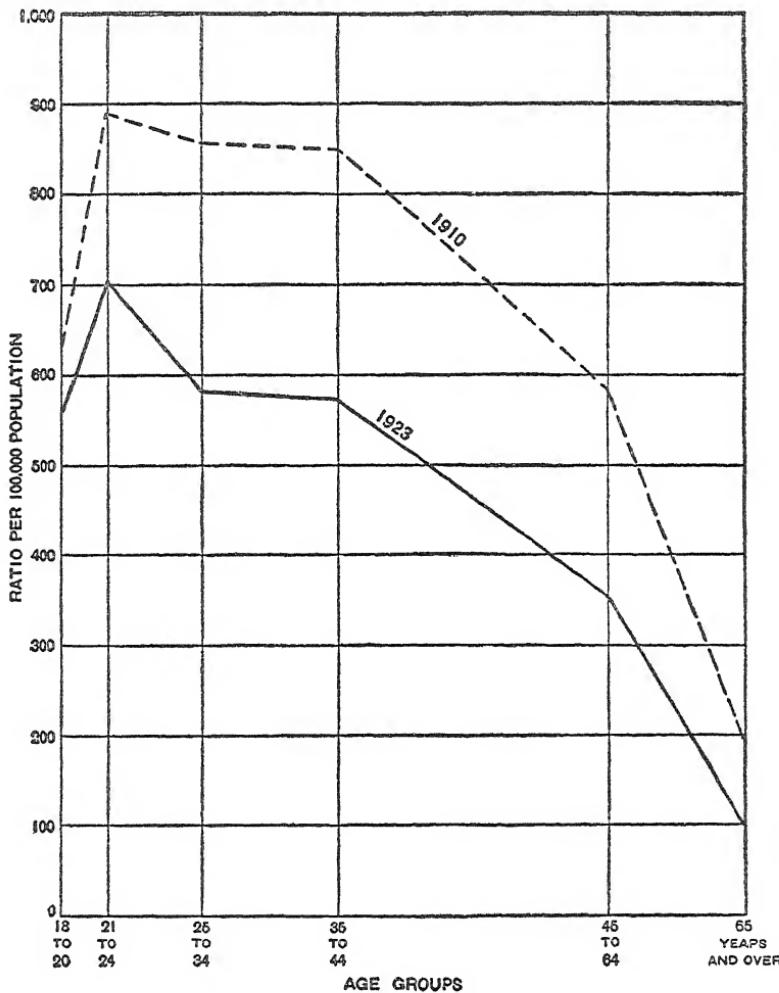
One must remember, however, that these different ratios may not indicate absolute differences between different sections of the country in criminality, for commitments vary not only with criminal tendencies but also with the character of laws and the way in which the police enforce the laws, and with the presence of large cities.

AGE	POPULATION 15 YEARS OF AGE AND OVER		COMMITMENTS DURING THE YEAR						Per cent of de- crease, 1910 to 1923
			NUMBER		PER CENT DISTRIBUTION		PER 100,000 POPU- LATION OF SAME AGE		
	1920	1910	1923 *	1910	1923	1910	1923	1910	
Total	72,098,178	62,473,130	357,493	479,787	100 0	100 0	495 8	768 0	-35 4
15 to 17	5,689,576	5,372,176	7,195	11,916	2 0	2 5	126 5	221 8	-43 0
18 to 20	5,522,082	5,546,049	31,086	35,119	8 7	7 3	562 9	633 2	-11 1
21 to 24	7,495,919	7,202,362	52,766	64,212	14 8	13 4	703 9	891 5	-21 0
25 to 34	17,157,684	15,152,188	100,007	129,974	28 0	27 1	582 9	857 8	-32 0
35 to 44	14,120,838	11,657,687	80,829	99,023	22 6	20 6	572 4	849 4	-32 6
45 to 64	17,030,165	13,424,089	60,838	78,638	17 0	16 4	357 2	585 8	-39 0
65 years and over	4,933,215	3,949,524	4,931	7,718	1 4	1 6	100 0	195 4	-48 8
Age unknown	148,699	169,055	19,841	53,187	5 0	11 1	...	...	...

* Enumerated for the period Jan 1 to June 30, estimated for the rest of the year.

Age. Crime varies with age. However, age is not a genetic factor in criminality but indicates that the true causes of crime vary with age.

In general it may be said that in the United States the ratio of offenses against the law based upon commitments per 100,000 of population of the same age rapidly increases from the age of ten years up to twenty-four, suddenly decreases in the next age-group, from that point decreases somewhat to the age-group 35-44, and then rapidly declines.



The table on page 40 shows the commitments to all institutions for offenders in the United States for 1910 and 1923.¹

OFFENSE	PER CENT DISTRIBUTION OF COMMITMENTS, JAN. 1-JUNE 30, 1923									
	TOTAL	AGE (YEARS)								
		Under 18	18-20	21-24	25-34	35-44	45-54	55-64	65 and over	Age un- known
All offenses	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Drunkenness	25.3	2.3	5.3	9.6	20.4	36.3	45.2	45.2	39.9	22.9
Disorderly conduct	14.8	17.6	15.4	14.0	14.0	15.4	16.3	17.3	16.8	9.9
Violating liquor laws	11.0	2.7	4.6	7.5	11.9	13.1	12.2	12.3	11.4	15.7
Vagrancy	7.8	7.2	11.3	9.9	7.3	5.7	5.4	7.2	13.6	11.5
Larceny	7.7	23.3	16.5	12.0	7.9	4.1	2.9	2.4	2.4	6.6
Assault	3.5	2.7	3.4	3.9	4.4	3.4	2.4	2.3	2.2	3.5
Violating traffic laws	3.2	1.9	5.0	5.5	3.6	2.3	1.4	0.5	0.2	2.9
Violating city ordinances	2.8	3.1	4.3	5.9	2.9	1.7	1.5	1.4	1.4	0.6
Burglary	2.6	12.1	6.9	4.1	2.4	1.2	0.6	0.5	0.4	1.0
Violating drug laws	2.0	0.2	1.1	2.1	3.1	2.0	1.2	1.0	2.1	1.3
Carrying concealed weapons	1.6	1.8	2.0	2.1	1.9	1.1	0.7	0.5	0.5	2.5
Fornication and prostitu- tion	1.4	1.7	2.5	2.8	1.7	0.7	0.4	0.1	0.2	1.6
Fraud	1.3	1.4	2.2	2.0	1.2	0.8	0.6	0.6	0.6	4.1
Forgery	1.2	1.7	1.7	2.0	1.4	0.8	0.6	0.6	0.5	0.7
Homicide	1.2	1.7	1.2	1.2	1.5	1.2	0.9	1.0	1.2	0.3
Gambling	1.1	0.9	1.1	1.3	1.5	0.7	0.4	0.2	0.2	3.2
Robbery	1.1	2.5	2.7	2.2	1.2	0.4	0.2	0.1	..	0.2
Malicious mischief and trespassing	1.0	1.8	2.3	1.5	0.9	0.5	0.3	0.3	0.3	2.3
Non-support or neglect of family	1.0	0.1	0.3	0.8	1.4	1.3	1.0	0.6	0.4	0.6
Rape	0.6	1.4	1.0	0.9	0.6	0.5	0.5	0.6	0.9	0.2
Adultery	0.3	0.1	0.3	0.4	0.5	0.2	0.1	0.1	*	0.6
Keeping house of ill fame	0.3	0.1	0.1	0.2	0.4	0.3	0.3	0.2	0.3	0.3
All other classified offenses	4.3	4.1	4.9	4.9	4.8	3.9	3.3	3.0	2.4	4.1
Unclassified and unknown	2.9	7.5	3.9	3.4	3.1	2.5	1.8	1.8	2.1	3.1

* Less than one-tenth of 1 per cent.

¹ *Prisoners: 1923*, Bureau of the Census (Washington, 1926), p 71, Table 39 Latest figures available for commitments to all institutions

Graphically the commitments by age-group per 100,000 population of same age for 1923 is shown by the chart on page 41.²

Does the incidence of conviction for crime at different ages vary at all for the different crimes?

The census report for 1923 furnishes the table on page 42 bearing upon this question. Certain general trends are apparent in this table. For example, larceny was the leading crime and disorderly conduct the second in importance for each age-group under twenty-one. Disorderly conduct ranked first and larceny second in those from twenty-one to twenty-four. For the age-groups under twenty-five the percentages of those convicted of vagrancy and burglary were rather large. Of those under eighteen years of age 60 per cent were convicted of larceny, disorderly conduct, vagrancy, and burglary, while of those eighteen to twenty years old 50 per cent were convicted of these crimes, and of those from twenty-one to twenty-four years old only 40 per cent. In other words, these crimes measured by the commitments seem to be most characteristic of those under eighteen years of age, with decreasing frequency in higher age-groups. The percentages of those convicted of burglary, forgery, fraud, larceny, robbery, and such offenses against property were especially large for the age-groups under twenty-five. Drunkenness was the leading offense, disorderly conduct second in importance, and violating liquor laws third for each of the age-groups between twenty-five and fifty-four. For those above sixty-five they were, in order, drunkenness, disorderly conduct, vagrancy, and violating liquor laws. Drunkenness, it will be observed, steadily increased in importance in the various age groups up to forty-five, showed little or no change from forty-five to sixty-four, and then decreased. Furthermore, the commitments for gainful offenses against property, which we have seen were especially high for those in the younger age-groups, diminished rapidly with increasing age.

If with the census report we arrange the material in another way we can see the variation by age-group of commitments for a particular crime. The table on page 44 shows that the commitments under thirty-five years of age constituted 55 per cent for all but four offenses listed in this table. Drunkenness, disorderly conduct, violating liquor laws, and non-support are the exceptions. Only 31.7 per cent of those committed for drunkenness were under thirty-five, and only about 50 per cent of those committed for the other three offenses. For robbery, burglary, and larceny, from 80 to 90 per cent of the commitments were of those under thirty-five years of age.

Sex. Is the one sex more criminal than the other? Are the offenses

² *Ibid*, p. 72.

OFFENSE	COMMITMENTS JAN. 1-JUNE 30, 1923, EXCLUSIVE OF THOSE WHOSE AGE WAS NOT REPORTED							
	TOTAL	PER CENT OF TOTAL BELONGING TO SPECIFIED AGE-GROUP (YEARS)						
		Under 18	18-20	21-24	25-34	35-44	45-54	55-64
All offenses	157,203	2 2	9 3	15 7	29 6	23 9	13 1	4 9
Drunkenness	39,971	0 2	1 9	5 9	23 7	34 1	23 2	8 7
Disorderly conduct ...	23,664	2 5	9 5	14 6	27 7	24 4	14 1	5 6
Violating liquor laws	16,805	0 6	4 0	11 0	33 1	29 3	14 9	5 6
Vagrancy	11,860	2 1	13 9	20 7	28 8	18 1	9 3	4 7
Larceny	12,218	6 5	19 7	24 2	30 2	12 7	4 8	1 5
Assault	5,571	1 7	9 0	17 1	36 6	22 8	8 7	3 2
Violating traffic laws	5,028	1 3	14 5	26 8	33 5	17 3	5 6	0 8
Violating city ordinances	4,603	2 3	13 6	31 9	29 2	13 6	6 5	2 3
Burglary	4,159	9 8	24 0	24 5	26 9	10 6	3 1	0 8
Violating drug laws ..	3,254	0 2	5 0	15 6	44 8	22 8	7 7	2 5
Carrying concealed weapons	2,378	2 6	12 0	22 2	37 7	17 3	6 0	1 7
Fornication and prosti- tution	2,226	2 6	16 1	30 6	35 0	11 5	3 4	0 5
Fraud	1,847	2 5	17 1	26 0	29 2	15 6	6 2	2 5
Forgery	1,944	3 0	13 0	24 9	34 3	15 7	6 4	2 2
Homicide	1,930	3 0	9 0	14 7	35 2	22 8	9 7	4 1
Gambling	1,563	2 0	10 2	21 0	44 4	15 9	5 2	1 0
Robbery	1,768	4 8	22 3	31 1	31 6	7 5	2 3	0 4
Malicious mischief and trespassing	1,498	4 0	22 8	25 2	28 7	12 6	4 7	1 6
Non-support or neglect of family	1,641	0 3	2 9	11 5	40 3	29 1	12 5	2 9
Rape	1,042	4 5	14 1	20 2	27 4	17 8	9 5	4 7
Adultery	485	0 8	7 8	20 6	44 3	19 0	5 8	1 4
Keeping house of ill fame	399	0 5	2 3	12 0	41 1	23 8	13 8	4 8
All other classified of- fenses	6,736	2 0	10 6	18 0	33 3	21 9	9 9	3 4
Unclassified and un- known	4,613	5 5	12 5	18 0	31 6	20 4	8 0	3 0

committed by males the same as those committed by females? Does age have an effect upon the crimes committed by the sexes?

In 1930 of the commitments of adults to prisons and reformatories in the United States 20.6 males were received for every female. Of the native white 21.9 males committed to one female, of foreign-born white 21.8, and of Negroes 16.1.³

The ratio between the sexes varied, however, in the various geographic divisions of the country.⁴ While in the whole country there were eleven times as many males as females committed in proportion to 100,000 of each sex in the population, in the South Atlantic division only 5.8 times as many males as female were committed, while in the Pacific division there were 18.5 times as many males as females committed in 1923.⁵

These facts, when considered in the light of others, such as race and the differences in standards between city and country, probably are to be explained in part by the large Negro population in the South and in the cities of the North Negro women are committed in the ratio of 5 to 1 of the white females, the population of each being considered.

What difference is there in the offenses committed by the two sexes? The census report gives the following table showing the percentage of females committed during the first six months of 1923 for all important offense groups in which more than 10 per cent of the prisoners committed were females⁶:

Prostitution	100.0	Drug addiction	13.7
Keeping house of ill fame	52.9	Disorderly conduct	12.9
Fornication	42.6	Violating fish and game laws ...	12.8
Adultery	41.0	Contempt of court	11.9
Delinquency	41.0	Vagrancy	11.2
Violating education laws	24.0	Nuisance	11.1
Contributing to delinquency	19.2	Violating drug laws	10.4
Threat to do bodily harm	18.5	Bigamy and polygamy	10.4
Obscenity	16.5		

³ *Prisoners in State and Federal Prisons and Reformatories, 1929 and 1930* (Bureau of the Census, Washington, 1932), p 31

⁴ Commitments rather than ratio of prisoners in institutions are taken, because commitments are a better basis for the measurement of the extent of criminality than number of prisoners, since in a part of the country where sentences are long there will be larger numbers in institutions than where the sentence is short. On the other hand, one must remember that in the census statistics there is no way of determining how many of the commitments are for more than once in any given year in any particular section of the country.

⁵ *Prisoners: 1923* (Bureau of the Census, Washington, 1926), p 59

⁶ *Ibid*, p 51. This is the latest census report which tabulates the commitments to all penal and correctional institutions

In 1923 the leading offenses of males committed were drunkenness (26.9 per cent), disorderly conduct (14.4 per cent), violating liquor laws (11.6 per cent), larceny (8.0 per cent), vagrancy (7.7 per cent), assault (3.7 per cent), violating traffic laws (3.5 per cent).⁷

If, however, we consider only those adults committed to State and Federal prisons and reformatories—those convicted of the more serious offenses—and note the number committed per 100,000 of the same sex, the picture is different. For males in 1930 the rank in relative importance was larceny and related offenses (26.2, of which 20.4 were for larceny alone), burglary (20.6), violating liquor laws (12.6), robbery (11.6), forgery (6.8), homicide (5.5), assault (4.6), and rape (3.1). For females the relative rank was sex offenses (1.1), larceny and related offenses (0.7), violating liquor laws (0.6), homicide (0.4), violating drug laws (0.3), forgery (0.3), burglary (0.2), assault (0.2), robbery (0.1).

For some time the ratio of males to females received by State and Federal prisons and reformatories from the courts has been steadily increasing as shown by the following table⁸:

RATIO OF MALES TO FEMALES AMONG PRISONERS RECEIVED FROM COURTS,
BY RACE AND NATIVITY 1926 TO 1930

Year	All classes	Native white	Foreign- born white	Negro
1930	20.6	21.9	21.8	16.1
1929	16.7	18.0	16.7	12.5
1928	16.3	17.7	15.8	12.4
1927	14.5	15.1	17.0	11.4
1926	14.9	16.8	17.9	10.6

Race and Nationality. Measured on the basis of 100,000 population of each race, in 1923 the commitments of Negroes were 3.2 times those of whites. The percentage of Negroes committed was greater in all geographic divisions than in the South, the highest being 8.5 times that of the white per 100,000 in the East North Central Division and the lowest being twice that of the white per 100,000 in the East South Central.⁹ However, since the ratio of commitments for all classes of the population is greater in the cities than in the country, and since most of the Negroes in the North live in cities, that may explain the higher ratio in these Northern divisions.

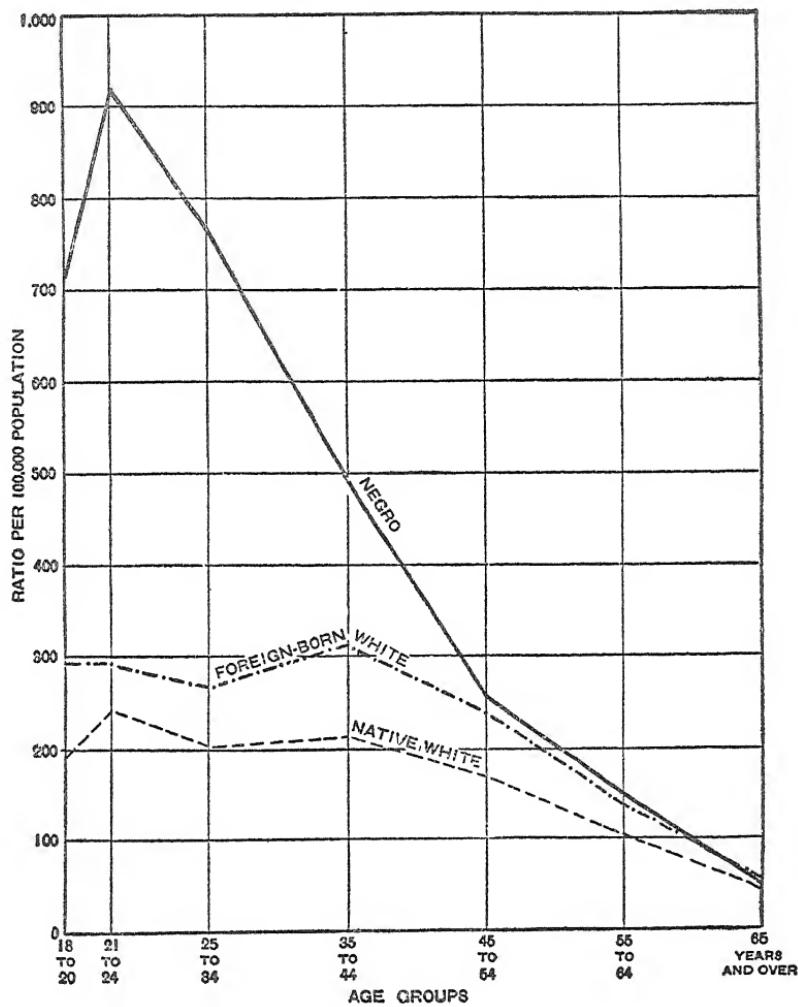
In 1923 the commitments of Negroes showed wide variation from those

⁷ *Prisoners: 1923* (Bureau of the Census, Washington, 1926), p. 52.

⁸ *Prisoners in State and Federal Prisons and Reformatories, 1929 and 1930* (Washington, 1930), p. 31.

⁹ *Prisoners: 1923* (Bureau of the Census, Washington, 1926), p. 66.

of both native and foreign-born whites in the age-groups below forty-five years. The following graph from the census report shows the situation.

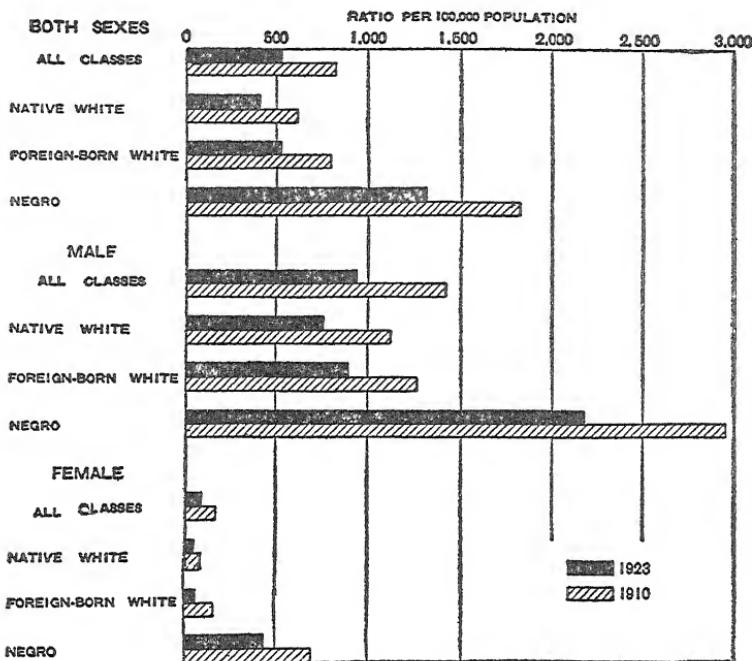


COMMITMENT RATIOS BY AGE, RACE, AND NATIVITY: 1923

Moreover, as the graph on page 48 indicates, the commitments of all races and nationalities in the United States were less in 1923 than in 1910.¹⁰

The table on page 48 shows the ratios of the races and nationalities received in 1929 and 1930 from the courts by the State and Federal prisons

¹⁰ *Ibid.*, Fig. 8, p. 63.



COMMITMENT RATIOS BY RACE, NATIVITY, AND SEX 1923 AND 1910

and reformatories per 100,000 of population fifteen years of age and over of the same race, sex, and nationality.¹¹

Are there any differences in the offenses committed by the two races?

NUMBER OF PRISONERS RECEIVED FROM COURTS PER 100,000 OF POPULATION 15 YEARS OF AGE AND OVER, BY RACE, NATIVITY, AND SEX 1930 AND 1929

RACE AND NATIVITY	1930		1929	
	Male	Female	Male	Female
All	149.5	7.4	135.6	8.3
White	124.0	5.8	113.4	6.5
Native white	140.0	6.4	128.8	7.2
Foreign-born white	52.6	2.8	46.4	3.2
Negro	416.3	25.2	385.1	30.7
Other races	256.1	7.7	260.7	8.1

¹¹ Table 22, *Prisoners in State and Federal Prisons and Reformatories, 1929 and 1930* (Bureau of the Census, Washington, 1932), p. 30.

In 1929 and 1930 the offense of first order among serious crimes for native whites was larceny, and for Negroes burglary. Strikingly the commitment rate of Negroes for rape was surpassed by both native white and foreign-born white.¹²

One should keep in mind, however, in considering these differences as shown by commitments, that the Negroes are a socially subject race and that some of the difference may be due to discrimination against them in the courts and the community. Furthermore, it is probable that, compared with the white man, the Negro charged with crime is less frequently able to employ expert counsel to defend his case.

How do the Negro males compare with the Negro females in criminality, measured by the proportion of commitments? While Negro males in 1930 were committed to prisons and reformatories in the ratio of more than 3.3 Negroes to one white man, Negro women were committed in the ratio of more than 4.3 to one white woman. The Negro woman's ratio, however, was but 25.2 per 100,000 while the Negro man's was 416.3, as shown by the preceding table.

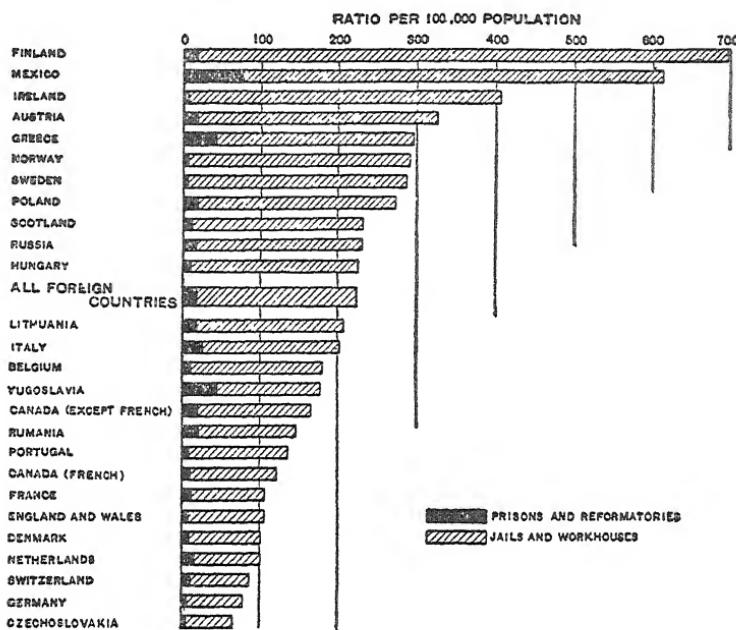
The United States has in its population representatives of more nationalities than any other country in the world. The census has made an exhaustive study of the proportion of prisoners and of commitments contributed by each nationality in the United States. Space will not permit us to set these out in detail. In general it may be said that the census report of 1923 shows 1.3 times as many commitments in proportion to population of foreign-born as of native whites. There was considerable variation in this matter between different parts of the country. In the South Atlantic division the ratio of the foreign-born whites was 1.9 times that of the native whites, while in the East South Central division the ratio was only 0.6 to 1.¹³

However, when the commitments for the more serious offenses are considered, an entirely different picture is presented. In 1923 the census included jail commitments as well as commitments to prisons and reformatories. In 1929 and 1930 the report included only commitments to prisons and reformatories. By reference to the table on page 48, it may be seen that in both 1929 and 1930 the ratio of commitments per 100,000 of population of the same category for the foreign-born was only about one-third as large as that of the native-born. Therefore, for serious offenses, commitments of the foreign-born probably indicate that the old assumption that foreigners are responsible for more than their share of crime is quite incorrect.

¹² *Ibid.*, p. 31

¹³ *Prisoners*. 1923 (Bureau of the Census, Washington, 1926), p. 65

The following census graph depicts the situation in 1923.¹⁴



COMMITMENT RATIOS OF FOREIGN-BORN WHITE PRISONERS, BY COUNTRY OF BIRTH AND CLASS OF INSTITUTION 1923

It is clear from this graph that Finland stands first in all crimes, but that Mexico occupies first place in serious crimes (773 per 100,000 population). However, Yugoslavia (46), Greece (42.1), Italy (25.9), and Rumania (21.4) follow next in order.¹⁵

¹⁴ Later reports of the census give only absolute numbers instead of ratios or percentages. This graph is from *Prisoners 1923* (Bureau of the Census, Washington, 1926), p. 95.

¹⁵ Ross in discussing the number and character of the crimes of the immigrants says, "In the quality of their crimes our immigrants differ more from one another than they do in complexion or in the color of their eyes. The Irishman's love of fighting has made Donnybrook Fair a by-word, yet it is a fact that personal violence is six or seven times as often the cause of confinement for Italian, Magyar, or Finnish prisoners in our penitentiaries as for the Irish. Patrick may be quarrelsome, but he fights with his hands, and in his cups he is not homicidal, like the South Italian, or ferocious like the Finn. Three-fifths of the Hebrew convicts are confined for gainful offenses, but only one-fifth of the Irish. Among a score or more of nationalities, the Irish stand nearly at the foot of the list in the commission of larceny, burglary, forgery, fraud, or homicide. Rape, pandering, and the white-slave traffic are almost unknown among them. What could be more striking than the fact that more than half of the Irish convicts have been sent up for 'offenses against public order,' such as intoxication and vagrancy? One

As in the case of the Negroes, so with the foreign-born, it must be remembered that they belong to the class of laborers, are poor, and therefore do not have the money to pay lawyers to fight their battles for them in the courts and often have to go to jail because they have no money with which to pay a fine. Furthermore, like the Negroes they are a lower economic and social class and suffer somewhat by that fact.¹⁶ Both Negroes and foreign-born have in recent years gone to the cities in large numbers. Both have been habituated to country life. The foreign-born have an undue proportion of their numbers in urban communities.

It has been held that the high ratio of criminality for those born of foreign or mixed parentage was due to the fact that the children of foreigners in the process of Americanization get out of the control of their parents more readily than the children of native Americans.

This seems to be borne out by the census figures in 1923 and by a special study of boy delinquents in Chicago by the Federal Children's Bureau published in 1930. In the first six months of 1923 the foreign-born under eighteen years of age were committed 14 times as frequently per 100,000 of the same age-group as the native-born, and 1.5 times as often for the age-group 18-20.¹⁷

Marital Condition. In 1923 in the United States, of those committed to prisons and reformatories the single males numbered over twice as many per 100,000 of population fifteen years of age and over as the married (72.0 to 31.6), the widowed slightly more (34.6), and the divorced almost seven times as many as the married.¹⁸ The single female was committed more frequently (4.0) than either the married (2.9) or the widowed (2.3) per 100,000 population fifteen years of age and over. The divorced female was committed over six times as often (24.1) as the single, nearly ten times as frequently as the married, and over ten times as often as the widowed.¹⁹ There is not much doubt that those who are married commit less crime than the single, cannot help feeling that the Celtic offender is a feckless fellow, enemy of himself more than of any one else. It is usually not cupidity nor brutality nor lust that lodges him in prison, but conviviality and weak control of impulses" *The Old World in the New* (New York, 1914), pp. 33, 34.

¹⁶ Hart, "Immigration and Crime," *Proceedings of the National Conference of Charities and Correction*, 1896, p. 307, "Immigration and Crime," *American Journal of Sociology*, II, 369, Hourwich, "Immigration and Crime," *American Journal of Sociology*, XVII, 470. See also National Commission on Law Observance and Enforcement No. 10, *Report on Crime and the Foreign Born*, Part II.

¹⁷ *Prisoners 1923* (Bureau of the Census, Washington, 1926), p. 75. *Youth and Crime*, Children's Bureau Publications, No. 196 (Washington, 1930), pp. 87, 88.

¹⁸ We cannot feel confident of the figures on divorced committed, since the census report on the number divorced in the general population is probably defective.

¹⁹ *Prisoners. 1923* (Bureau of the Census, Washington, 1926), p. 82.

the widowed, or the divorced. The Census Report of 1910 endeavored to make the comparison on the basis of age and discovered that when this was done, age distribution is not of much influence in the matter. There cannot be much doubt that the regular and responsible lives of the married render them less likely to commit offenses than the unmarried.

Education. Of those committed to prisons and reformatories in the United States during the first half of 1923, 10.7 per cent were illiterate, as compared with 7.1 per cent of the total population of the country. Only 14.4 per cent of those committed had attended high school, 34 of those committed had attended college, and but 1.0 per cent a trade school. The females were less illiterate than the males (8.5 per cent to 10.8 per cent), more had attended high school (16.1 per cent to 14.3 per cent), and fewer had attended college (28 per cent to 3.4 per cent).²⁰

The ratio of commitments per 100,000 of the adult population was 42.7 for the illiterate as against 27.3 for those able to read and write. Among the literate the commitment ratio was highest for those with an elementary education (31.4) and lowest for prisoners who had college experience. The illiterate had a commitment ratio about three times as great as the college graduate.²¹

Employment. The prisoners committed to State and Federal prisons and reformatories for the first six months of 1923 on the average were unemployed 26 per cent of the time that year. This figure is in striking contrast with the 10 per cent of time lost by the industrial wage-earner in the general population. While prisoners and industrial workers are not strictly comparable, yet the difference between the two seems significant. Prisoners apparently came from a class in which there was an unusual amount of voluntary or involuntary unemployment.

Moreover, the amount of time unemployed varies greatly with the type of crime for which prisoners were committed. Of the male prisoners who had been unemployed more than nine months the following offenders were high: drug law violators (11.4 per cent), burglars (11 per cent), robbers (9.1 per cent), thieves (8.2 per cent), and receivers of stolen property (8.2 per cent). On the other hand, the following offenders had a much smaller percentage unemployed for over nine months: embezzlers (28 per cent), killers (3.7 per cent), and rapists (3.9 per cent). Of the females over a fourth (27.3 per cent) of the prostitutes and of those committed for forni-

²⁰ *The Prisoners' Antecedents* (Bureau of the Census, Washington, 1929), p 18

²¹ *Ibid*, p 19. The statistical difficulty with these figures is that we do not have comparable figures for the non-prisoner adult population.

cation had been unemployed over nine months, while only a trifle over a seventh (13.7 per cent) of the thieves had been unemployed so long.²²

It is clear, therefore, that an unusual proportion of prisoners in the "higher" penal institutions have been unemployed.

Urban and Rural Criminality. How does the city compare with the country in criminality? There is current a belief that "God made the country, man made the city, and the Devil made the little country town." Does this adage represent the situation correctly so far as crime is concerned?

Of those committed to State and Federal prisons and reformatories during the first six months of 1923, the table on page 54 shows the distribution.²³ Thus it appears that except for violating liquor laws the commitment ratio for the residents of rural districts was materially less than that of urban residents. For drug violators the ratio for rural violators was eight times greater than for urban violators (3.2 to 0.4). Crimes against property occur chiefly in the cities. The difference between the ratios of country and city was small for homicide. Strikingly the highest commitment ratios were for residents of cities of from 25,000 to 100,000 inhabitants. From the above table one might conclude that "the Devil made" the larger cities.

The explanation of the greater criminality of the large city is to be found in the difference in social conditions in the city and country. The elements of the explanation may be summarized as follows:

1. There is more law-breaking in the city than in the country because there are more laws to break. Moreover, there are more officials charged with the responsibility of seeing that breakers of the law are dealt with by the courts. The same man, therefore, might have an entirely different history in the city and in the country. In the country he might commit the same act as in the city and yet escape observation. Furthermore, the complex relationships of city life demand that those relationships should be more carefully guarded and regulated than in the country.

2. The contacts in the crowded city are much more frequent and therefore provide irritating situations which lead to personal violence.

3. The pressure of poverty is frequently very much harsher in the city than in the country, and therefore the economic motives to crime probably play a larger part in city populations than in sparsely settled districts.

4. The crowded living conditions in cities, denying common decency in houses, and the incitements to vice, more frequent and also commercialized, intensify the demoralizing effects of contact between people.

²² *The Prisoners' Antecedents* (Bureau of the Census, Washington, 1929), p. 38.

²³ *Ibid.*, Table 4, p. 9.

CRIMINOLOGY AND PENOLOGY

NUMBER OF COMMITMENTS TO PRISONS AND REFORMATORIES DURING THE FIRST SIX MONTHS OF 1923, PER 100,000 OF GENERAL POPULATION OF THE SAME SEX, BY SEX, OFFENSE, AND PLACE OF RESIDENCE

SEX AND OFFENSE	TOTAL*	URBAN PLACES	PLACES WITH A POPULATION OF				RURAL DISTRICTS
			100,000 and over	25,000 to 100,000	10,000 to 25,000	2,500 to 10,000	
Both sexes, all	180	231	23.3	26.0	22.4	19.8	10.2
Male, all	332	426	42.9	47.8	41.1	37.0	19.1
<i>Against the person</i>							
Homicide	30	29	2.8	3.2	2.7	3.3	2.3
Grave	10	10	0.7	1.3	0.8	1.4	0.7
Lesser	21	20	2.0	1.9	1.8	1.9	1.6
Assault	17	20	1.9	2.3	2.1	1.8	1.2
<i>Against property</i>							
Robbery	2.8	4.5	6.1	3.9	2.5	1.9	0.7
Burglary	5.9	7.7	7.5	8.6	8.1	7.3	3.0
Larceny and related offenses	10.4	14.0	13.3	16.0	14.4	13.3	5.5
Larceny	6.3	8.5	8.4	9.7	8.4	7.3	3.4
Embezzlement	0.5	0.6	0.6	0.6	0.5	0.6	0.2
Forgery	2.4	3.2	2.5	3.7	4.0	3.9	1.4
Fraud	0.6	0.8	0.8	0.9	0.5	0.8	0.3
Having stolen property ..	0.6	1.0	1.0	1.1	1.0	0.7	0.2
<i>Against sex morality</i>							
Rape	1.4	1.7	1.3	2.2	2.0	2.2	1.0
Fornication	0.1	†	†	0.1	†	0.1	0.1
All other sex offenses	1.0	1.2	1.2	1.4	1.3	1.0	0.6
Violating drug laws	1.9	3.2	4.5	3.2	1.5	0.8	0.4
Violating liquor laws	2.4	1.8	0.9	2.9	2.9	2.4	2.8
Miscellaneous	2.6	3.5	3.4	4.0	3.6	3.1	1.4
Female, all	2.3	3.5	3.6	4.3	3.7	2.6	0.6
<i>Homicide</i>							
.	0.2	0.2	0.3	0.2	0.3	0.2	0.1
<i>Larceny and related offenses</i>							
.	0.4	0.6	0.7	0.8	0.5	0.3	0.1
<i>Fornication and prostitution</i>							
.	0.4	0.6	0.7	0.6	0.5	0.4	0.1
<i>Violating drug and liquor laws</i>							
.	0.3	0.6	0.6	0.9	0.3	0.3	0.1
<i>All other and unknown . . .</i>							
.	1.0	1.5	1.3	1.8	2.1	1.4	0.3

* Includes those with no report as to residence

† Less than one-tenth of 1 per 100,000.

5 The crowded city, with the possibility of hiding, draws the more turbulent and criminally inclined elements of the country to itself. Consequently, more criminals of the habitual or professional kind will congregate in the city. Furthermore, it is in the city where those who have been thoroughly demoralized find the excitements and the vice which they crave.

6. Because of the economic opportunities offered by the city, its population is composed of a higher percentage of adults than the country population. Since we have seen that the young adult is in the age of highest criminal incidence, it is natural to expect that the rate of criminality in cities would be greater than in the country.

The Social Menace of Crime. According to our definition of crime, it is an act believed to be injurious to society. That belief may be due to tradition, custom, magical practices, imaginary evil results, or observed and carefully established evil results of actions or omission of acts. Only as the belief is based upon observed consequences to society, that is, upon scientifically established judgments as to the effect of individual conduct upon the social welfare, can we have a criminology and a penology which contributes to social welfare.

If the conduct of an individual or a group is certainly detrimental to the welfare of society, then society is warranted in taking measures to repress that kind of conduct. Otherwise, interference of the group with the conduct of individuals and groups becomes oppression, stifles individual initiative, and crushes that variation in social conduct which provides experimental variation in social life.

In the history of society, often a thing has been made a crime in the interest of a particular individual or group to the detriment of others. A despot, for his own particular benefit, has often made acts crimes which were not inimical to the welfare of society. Sometimes religion has brought its sanctions to bear upon conduct which had no relation to social welfare. The same is true of custom and tradition and all the other methods of social control. Thus it has happened in the history of society that some things have been made criminal which from the point of view of social welfare are not detrimental to the welfare of the group. In general it may be said that only as society learns to establish methods of determining what conduct is conducive in social welfare, what conduct is indifferent, and what is subversive of organized social life in the interest of all can it determine criteria of crime. However, in the history of humanity experience has shown that certain kinds of conduct are inimical to the welfare of group life. Such acts are murder, theft, adultery, infanticide, the wanton destruction of property of others, and to a less degree acts which are subversive of organ-

ized group life. The objective test of the criminality of an act or the omission of an act is whether it menaces the welfare of the group.

Now, however a society may define crime, its efforts to repress it cost money. The figures we have given show that fact. If the society is making criminal those types of conduct which do not endanger the life of the group, it is spending money and effort needlessly. The cure for that type of criminality is a revision of society's definition of crime on the basis of ascertained results and the toleration of that kind of conduct.

If, however, certain acts are not condemned by public opinion and repressed by society, society is being menaced by conduct of individuals and groups and may be suffering from the consequences without being conscious of that fact. Illustrations are the toleration of lynching and the commercialization of the liquor traffic. Large sections of our population look upon these matters as indifferent to the welfare of society.

Again, if our methods of dealing with individuals are such as to produce anti-social conduct, such as neglect of the leisure time of children or youth, a system of education which does not prepare people to earn their own living or to live cooperatively in group life and to subordinate their own selfish desires to the welfare of society, then society is responsible for results which menace its existence.

To-day crime is a serious menace to organized society. If a tenth of our expenditure on public projects is spent on the repression and correction of crime, and if we support an army of a quarter of a million of our people in the United States either in idleness or in ways in which they do not support themselves, we are compelled to spend less of our group-income on other desirable objects. Hence, it is important that society give attention to the matter of crime and its prevention, to the best methods of correcting anti-social conduct, and that it should devise methods whereby those who cannot be permitted to live at large among their fellows make as great return to society as possible. Consequently, the study of the causes of crime and of methods of correcting and preventing criminality is of the very greatest social importance.

QUESTIONS AND EXERCISES

- 1 Why can we not say that, since the high incidence of crime occurs at the age 21-24 youth is a cause of crime?
- 2 Explain why it should appear from the census figures that crime is greater in one section of the country than in another.
- 3 Why should drunkenness not appear among the three most important crimes before the age-group 25-34?

4. Explain why males are so much more criminal than females; why Negro females are so much more criminal than white women, why Negroes are more criminal than whites, why whites exceed Negroes in commitments for drunkenness
5. From the figures cited in the text would you say that married life is less conducive to crime than single life? Why?
6. Why is juvenile criminality of so much more serious import than adult?
7. If there is an unusual proportion of the foreign-born in the age-group 21-24, 25-34, what effect would that have upon their crime rate? Why?
8. Why should Negro women have a higher crime rate than white women?
9. Explain the higher crime rate of the illiterates, of the unemployed.

PART II
THE MAKING OF THE CRIMINAL

CHAPTER V

FACTORS OF THE PHYSICAL ENVIRONMENT

BEFORE the rise of scientific conceptions things were thought to happen in human life by Fate or Chance or Providence. Now we seek to find causes for the events of life. The human being is so complex that it is much more difficult to disentangle the various influences which have produced a certain kind of conduct than it is to isolate the factors which contribute to a certain result in an experiment in physics, chemistry, or any of the natural sciences. Yet, even in human affairs we often observe the recurrence of types of conduct in connection with certain conditions in the individual's physical environment, in the individual himself, or in his social and economic experiences. The fact of recurrence raises the question, Is the connection only accidental or is there really some causal relationship?

In some cases we can only say that a set of conditions are associated with certain conduct. For example, when we find very frequently that a child who has been brought up in a bad home and has lived with thieves until he has become an adult develops into a thief, we are inclined to believe that association with thieves in childhood causes theft. However, we must never forget that often this child is the progeny of thieves and may have become a thief partly because of an inheritance of physical and mental characteristics which make the association effective in producing a thief. Both in life and in fiction it has appeared that children subject to the same influences have turned out differently. The Artful Dodger and Oliver Twist both lived in the household and under the tutelage of Fagin, but the one became a sneak-thief, while the other developed into a strong character. What would have happened, however, had Oliver not been rescued from Fagin and all the surroundings which were playing upon him no one can tell.

Historians of civilization and sociologists have noted the influence of physical nature upon the development of society. Montesquieu and von Treitschke have thought that climate and the topography of the country affect a people directly, attributing the difference in mental and artistic characteristics of people in the different parts of the earth to these factors. Buckle, Spencer, Miss Semple, Giddings, and others have seen that the problem is not so simple, but that the physical environment usually acts

indirectly through its effects upon the density of population, economic development, and cultural institutions¹ The Italian school of criminology emphasized the influence of the physical factors upon crime

Density of population depends partly upon the physical topography of the country. Such aggregations of population as New York and Chicago would be impossible at some other geographic locations. Density of population, however, results, among other things, in a higher crime rate

Moreover, the fertility of the soil and the richness of other natural resources determine to some extent the economic welfare of society. As we shall see in the study of economic factors, economic conditions have a rather direct bearing upon the making of the criminal.

Furthermore, certain studies raise the question as to whether climate, seasons, humidity, and other geographical and climatic conditions may not have a direct effect upon the human organism by way of disturbing its balance or by generating certain irritabilities and states of mind which have a direct issue in criminal acts. The problem before us, then, is to determine what influence, either direct or indirect, the physical environment has upon crime. Here we can notice the parallelism between crime and certain geographic conditions and between crime and certain conditions of the weather. We should remember in studying these correlations that the parallelism may be the result of other factors than these natural surroundings.

GEOLOGY AND CRIME

A number of the Italian, and some of the French and German, criminologists have endeavored to indicate correspondences between different geological features and the crime rate. It must be confessed, however, that these attempts have not been very successful Lombroso, for example, studied the influence of the geological differences upon political crimes and crimes against the person in different parts of France. These differences were so slight as to be negligible.²

GEOGRAPHY AND CRIME

An effort has been made to ascertain whether there is any relationship between the general physical conformation of the country and criminality, especially crimes against persons. Lombroso believed that he had discovered that the minimum occurred in the level parts of France, a slightly greater portion in the hilly parts, and the maximum amount in the mountainous

¹ For a detailed discussion of the influence of the physical environment upon society, see Gillin and Blackmar, *Outlines of Sociology* (New York, 1930), Chap. 6

² Lombroso, *Crime, Its Causes and Remedies* (Boston, 1912), p. 17

districts. On the other hand, he believed that he found rape more common in the level country than in the mountains and hills. The same he believed to be true for crimes against property.

He explains these findings by saying that the mountains offer more opportunity for ambuscades and breed a more active race. However, his explanation for the reverse situation as to rape and crimes against property is that in the level regions you have the larger aggregations of population where these crimes are always found in greater abundance.³

Lombroso argues that through its effect upon the health of the people, the physical environment produces criminality. He cites, for example, that the districts of Italy most subject to malaria show a maximum number of crimes against property, while there seems to be no connection in the statistics between malaria and homicide in either Italy or France. On the other hand, the districts of Italy and France where goiter prevails and the resulting cretinism is indigenous, and in which the soil has great influence on the health and intelligence of the inhabitants, have less than the average number of homicides, thefts, and with the exception of a few districts, sexual offenses.⁴

CLIMATE AND CRIMINALITY

It has been observed that crime against the person rises to high rates in countries with a warm climate, while crimes against property have a low rate. Numerous efforts have been made to explain this fact on the basis of the irritating effect of heat upon the human organism. It has been claimed that excessive heat stimulates the emotions and tends to increase irritability. Therefore the assumption is that in the warm climates you have a more excitable, irritable population than in temperate or cooler countries. This hypothesis, however, has not been verified. While the people of some hot climates are easily excited, others are rather sluggish and phlegmatic. Studies in some countries, moreover, have not confirmed this climatic influence. For example, in Germany the crime rates vary from east to west rather than north to south, being higher in the east than in the west.⁵

Lombroso attempts to show that southern Italy has a higher criminal rate than northern Italy. His figures are based upon indictments for crime, the number of homicides, highway robberies with homicide, and aggravated theft. He says that simple and aggravated homicide has a higher rate in Italy and other southern countries than in northern European countries

³ *Ibid.*, pp. 17, 18

⁴ *Ibid.*, pp. 18, 19

⁵ Mayo-Smith, *Statistics and Sociology* (New York, 1904), pp. 270, 271.

such as England, Denmark, and Germany. The same contrast between northern and southern Europe holds concerning political revolutions.⁶

THE SEASONS AND CRIMINALITY

Studies in every country indicate that crimes against the person are more numerous in summer than in winter, while crimes against property are more numerous in winter than in summer. To Guerry and Lombroso this proved the influence of heat upon criminality. Lombroso cites many figures to prove this contention. He tries to strengthen his theory of the relation of heat to crimes against person and of cold to crimes against property by reference to Ferri's study of crime in its relation to temperature, based upon French statistics from 1825 to 1878, and the criminal calendars of Lacassagne, Chaussinaud, and Maury, who charted the various kinds of crimes for the different months of the year. These calendars show that infanticide holds first place in the months of January, February, March, and April. Homicides and assaults reach their maximum in July. Parricides are committed most frequently in January and October. Rapes upon children occur most frequently in May, July, and August, with the minimum in December. Rapes upon adults reach their maximum in June and minimum in November. Crimes against property show less wide variations, though they seem to be most numerous in December and January, in the cold season.⁷

It is a question whether these climatic influences directly affect irritability and cause criminality. In summer people get out of the house more, contacts are more numerous, the opportunities for disagreements are greater, and consequently there is greater probability of personal violence than in the winter. Moreover, in European countries, where the women work in the fields, the opportunities for violence are very much greater in the summer than in the winter. Nevertheless, there is some evidence that heat exerts an influence upon the action of the nervous organization.

On the other hand, cold indirectly produces crimes against property by reason of the fact that in winter economic need is greater, since seasonal occupations are closed down and therefore money is scarce with which to buy the necessities of life. Temptations to steal are consequently greater than in the summer.

THE WEATHER AND CRIMINALITY

What has already been said with reference to climates and seasons has some bearing upon the problem of the weather's relation to criminality. The

⁶ *Op. cit.*, pp. 13-16

⁷ See also Mayo-Smith, *Statistics and Sociology*, pp. 271, 272

most important study of the relation of the weather to conduct has been made by Dexter, although some European authors have given attention to the matter, among them Corre and Lombroso.

Dexter, in his study of the relation of weather to certain crimes in New York City, and another study of the same relationships in Denver, reports the following findings:

1 The number of arrests increased quite regularly with *temperature*. Therefore, temperature, more than any other condition, affects the emotional states and leads to fighting. The influence of temperature upon females is greater than upon males.

2 As the *barometer* fell, the number of arrests rose. His explanation of this is that since a low barometer precedes storms, the feeling of an approaching storm arouses in some people the emotional state which results in violence.

3 Large numbers of assaults are to be found correlated with low *humidity* and a small number with high humidity. He explains this on the basis that high humidity of the atmosphere is both vitally and emotionally depressing.

4. The days when the *winds* are mild, that is, between 150 and 200 miles per day, are characterized by a high pugnacity rate. During days of calm and days of high wind, the number of arrests were less. He makes no explanation of his findings except to say that when the weather is calm an excess of carbon dioxide in the atmosphere may lessen the vitality.

5 He studied the number of arrests on *fair days and cloudy days*, with the result that he found that cloudy days are freest from personal encounters which attract the attention of the police. These facts he explains by the hypothesis that the clear days are the vitalizing ones.

His hypothesis of the effect of weather upon criminality is that these different meteorological conditions affect the bodily functions in different ways. Mild temperature, mild winds, fair days, and low humidity are of such a character as to accelerate the vital process of oxidation. He says: "Those meteorological conditions which are productive of misconduct in a broad sense of the word are also productive of health, and mental alertness: as a corollary misconduct is the result of an excess of reserve energy not directed to some useful purpose."⁸

CONCLUSIONS

While it is quite possible that climate, season, and geological conditions have some effect directly upon the human organism and thus determine to some extent whether the conduct shall be socially good or bad, the influence of the physical environment for the most part is indirect. These factors affect

⁸ Dexter, *Weather Influences* (New York, 1904), p. 266.

the economic conditions which determine whether the standard of living shall be high or low, whether there shall be great wealth or great poverty. They also determine whether the country is able to support a large population and whether this population is gathered together in large cities or distributed somewhat equally in smaller aggregations over the land. They have some effect upon the contacts of human beings with each other, the temptations that are presented to weak natures with disastrous social results, the kind of education possible to the young, and the kind of cultural and social organization which develops. In these ways the external factors have an effect in the amount of criminality, kinds of criminality, and to a certain degree the social reactions to crime. Whether geographic conditions, the seasons, and the weather have a direct effect upon human conduct we cannot say with assurance until further studies have been made.

That the physical environment operates indirectly in the making of the criminal suggests the course society should take in treating the criminal and in preventing crime. If the seasons are responsible for the unemployment at a certain period of the year which provides the economic situation favorable to theft, then we know that every effort of society to overcome with some social measure seasonal employment is a preventive. If the warm weather of the summer forces people out of their homes into the streets, parks, and open spaces of the country, where contacts are multiplied and where opportunities for acts of violence are increased, we cannot modify the heat of summer, but we can provide safeguards against the temptations to crime through supervision of outdoor activities. Hence, the indirect influences of the physical environment on crime must be met by certain social measures which will operate in the social field to offset the effects of opportunities for crime and irritating contacts.

QUESTIONS AND EXERCISES

1. Compare the local temperatures to be obtained from your local weather bureau with the record of arrests to be got from your local police office or court calendar
2. Compare the record of arrests for different crimes with the season of the year in which the crime was committed
3. Do you know of any facts with respect to the increased irritability of people in hospitals for the insane on the approach of a storm?
4. When you visit a prison ask the warden whether he has noticed any connection between weather conditions and the conduct of his prisoners
5. Estimate the importance of the physical environment for crime as compared with other factors, such as the economic and the social.

CHAPTER VI

THE PHYSICAL CHARACTERISTICS OF THE INDIVIDUAL

IN this chapter let us turn to a more intensive study of the factors in the individual's own physical nature which determine to a greater or less degree his destiny in society.

Human nature consists of a combination in each individual of certain characteristics, some of which he shares with other animals, some the same in kind but different in expansiveness and intensity, and others which he alone possesses.¹ Moreover, great differences are to be found among mankind. While the characteristics which are found in human nature have been named and described, not all human beings of even the same race have all these characteristics developed to the same degree. One may have a fear of open places, while others lack that characteristic. Most men are sociable to a degree, but there are certain individuals who flee from association with other human beings. Individuals differ also in degree of intelligence and in strength of the emotions and of the impulses. The play of these various capacities with the complex of circumstances from birth to maturity results in conduct.

How little is actually known of the subtle ways in which one's conduct is determined! How delicate is the balance in one's make-up! What seems but a very slight occurrence may determine conduct. Statistics reveal only the powerful influences which operate in a large number of cases. Only very careful probing by the psychologist, the psychiatrist, and the case worker uncovers the subtler influences to be found in suggestion, hatreds, irritations, examples, fatigues, innuendoes, and similar influences.

PHYSICAL ABNORMALITIES

Physical Stigmata and Crime. In discussing the physical factors in delinquency criminology has passed beyond the emphasis given by Lombroso. He believed that the stigmata of degeneracy were signs of the criminal nature of the individual. He went to great pains to describe these physical characteristics of what he called the born criminal. The variation of the head in size and shape from the type common to the race and region from which

¹ Thorndike, *The Original Nature of Man* (New York, 1913), Chaps. 2, 3

the criminals come; asymmetry of the face; excessive dimensions of the jaw and cheek bones; eye defects and peculiarities; the ear often of unusual size, or occasionally of very small size, or standing out from the head as do those of the chimpanzee, the nose twisted, up-turned, or flattened in thieves, or aquiline or beak-like in murderers, or with a tip rising like a peak from swollen nostrils; the lips fleshy, swollen, and protruding; pouches in the cheeks like those of some animals, peculiarities of the palate, such as a large central ridge, a series of cavities and protuberances such as are found in some reptiles, and cleft palate; abnormal dentition; the chin receding, or excessively long, or short and flat as in apes; abundance, variety, and precocity of wrinkles, anomalies of the hair, marked by characteristics of the hair of the opposite sex, certain defects of the thorax, such as too many or too few ribs, supernumerary nipples, an inversion of sex characters in the pelvic organs; excessive length of the arms, supernumerary fingers and toes; and imbalance of the hemispheres of the brain are among the most important physical abnormalities cited by Lombroso as characteristic of the criminal.²

While criminals often have such physical abnormalities, recent studies have shown that the same abnormalities are to be found in those not criminal and that such abnormalities do not have the importance in producing crime which was attributed to them by Lombroso and his school.³ They are found correlated frequently with mental conditions, such as insanity and mental defect, which have an influence upon conduct. Inasmuch as a proportion of criminals found in prisons are mentally abnormal, it is not surprising that the presence of a striking number of such physical abnormalities were observed by Lombroso. However, he had no adequate basis for a comparison with the general population of the same economic and social class and of the same general level of intelligence.

Moreover, Lombroso's explanation of criminality on the basis of atavism, which these abnormalities were made to prove, was a philosophical deduction which the facts do not warrant. His theory was that men commit crime because they represent in their physical and mental make-up a type of being which ontologically belongs to an earlier stage of evolution and they therefore commit acts which were natural to such a lower stage of social development. Modern biology and sociology have given pause to such rash and easy generalization. While there is some truth in the theory, it is now known that in most cases physical abnormality functions indirectly through inducing economic maladjustment and, through the emotional reaction, a sense of social inferiority. However, we must not forget that often the so-called stig-

² Ferrero, *Lombroso's Criminal Man* (New York, 1911), pp. 10-24.

³ See Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp. 168-178.

mata of degeneration are to be found in large numbers of the criminal population. Where found, however, they are usually the signs of mental defect or disease and of constitutional and hereditary deviations which may or may not affect conduct.

How Physical Conditions Affect Criminality. Physical characteristics of an individual affect his conduct in different ways. They may induce anti-social conduct directly, as through excessive energy or strength, leading to crimes of violence, or through small size or small hands enabling a person to enter small openings in buildings or easily insert the hand into pockets. Or, the physical characteristics may affect conduct indirectly by reason of their bearing upon ability to make an honest living or because of their effect upon the attitude of the individual to other people. Weakness or some physical disability may divert an individual from a successful economic career. Such characteristics may interfere with regular attendance at school and thus induce disgust for training and destroy educational interest. Truancy may result. A feeling of inferiority and injustice may thus arise to interfere with wholesome development of the personality. Physical deformity may mark an individual off from his fellows, deny or make difficult social achievement, destroy the social incentive to behave like his wholesome fellows, and select him for association with less socially desirable companions.

The poet's conception of how physical characteristics affect the personality to anti-social expression is seen in Shakspere's picture of Gloucester:

(GLOUCESTER *speaks.*)

"But I, that am not shaped for sportive tricks,
Nor made to court an amorous looking-glass,
I, that am rudely stamp'd, and want love's majesty
To strut before a wanton ambling nymph;
I, that am curtail'd of this fair proportion,
Cheated of feature by dissembling nature,
Deform'd, unfinish'd, sent before my time
Into this breathing world, scarce half made up,
And that so lamely and unfashionable
That dogs bark at me as I halt by them:
Why, I, in this weak piping time of peace,
Have no delight to pass away the time,
Unless to spy my shadow in the sun
And descant on mine own deformity.
And therefore, since I cannot prove a lover,
To entertain these fair well-spoken days,
I am determined to prove a villain

And hate the idle pleasures of these days.
 Plots have I laid, inductions dangerous,
 By drunken prophecies, libels and dreams,
 To set my brother Clarence and the king
 In deadly hate the one against the other:
 And if King Edward be as true and just
 As I am subtle, false and treacherous,
 This day should Clarence closely be mew'd up,
 About a prophecy, which says that G
 Of Edward's heirs the murderer shall be.
 Dive, thoughts, down to my soul· here Clarence comes "

—*King Richard the Third*, Act I, Scene i.

When physical abnormality plays a part in producing delinquency it is usually accompanied by a mentality and by personality traits unequal to the task of working out normal compensations for the disabilities. While occasionally among delinquents is to be seen the sensitive person whose physical characteristics have produced an anti-social grudge, more frequently the physical characteristics operate through unequal development of the mental and physical during adolescence, or through the physical weakness or sluggishness which interfere with economic or social success.

Physique and Criminality. A study by Goring of the physique of criminals compared with the general population in England, based upon an examination of criminals in Parkhurst Prison, shows that these convicts as a whole are physically inferior to the general population of the same age. With the exception of those convicted of fraud, they are shorter and lighter than non-criminals and than those convicted of violence to the person, who are stronger and have greater constitutional soundness than the members of the law-abiding community. But thieves and burglars, who constitute 90 per cent of the criminals, and the incendiaries are not only inferior in stature and weight but are puny relatively to the other classes of criminals.

Dr. Rock Sleyster, a former prison physician in the United States, says:

"The results of my investigation of height at the Wisconsin State Prison are quite similar to those of the anthropometric committee of the British Association for the Advancement of Science, though I am able to report on only half the number. . . . The Wisconsin convict, who cannot differ radically from the average white convict of any other state, is physically most markedly inferior to the average American citizen in height. He, a man grown, lacks 14 inches of the stature of the average freshman at our state university, and is 2 inches shorter than the average Harvard student, and it must be remembered that few of these students have reached their full growth and development. Likewise, he lacks 1.3

inches of the height of the men and boys who enlisted in the Civil War, and is 3 inches inferior in height to the Fellows of the Royal Society of England and English professional men.”⁴

He adds that the repeaters in the Wisconsin State Prison, although “of an average age of 33 years, lack 2.1 inches of the height of the average Wisconsin boy just out of high school” and “lack 2.5 inches of the height of the average American of their age and 2.7 inches of the height of the average Harvard student as reported by Professor Sargent.”⁵

Goring’s explanation of his facts is not that of Lombroso’s “criminal type” but rather that these bodily inferiorities “are selective factors, determining to some extent conviction for crime.” He says that the physically inferior are selected for crime by their occupations and their struggle with poverty. Moreover, he believes that physically superior beings are less prone to commit crimes than the inferior because of more amiable dispositions.⁶

Furthermore, it is probable that physical inferiority may operate to produce criminals through its effect on men’s ability to make a living by manual labor. If with lack of physical vigor is combined lack of intellect or of the training necessary for occupations which demand a high degree of strength or endurance, it might be supposed that physical inferiority would be found correlated with criminality. The occupational statistics of criminals seem to bear out the supposition that those occupations which require but little intellect or training furnish more than their proportion of the criminals.

Moreover, frequently physical inferiority manifested in some disability or chronic ailment starts the vicious circle of poverty, hopelessness, irritability, and crime. The case of Stasia Andrews’ father, cited in Chapter XI, illustrates the possibilities of such a factor.⁷

Goring attempted to ascertain whether the criminal differs from the men of the general population of the same age in any important way. He found that “those convicted of violence are the only criminals who differ significantly from the general community in their health and muscularity—they exceed the non-criminal standard by an amount equal to one-third of the standard deviation of health, and to three-fifths of the standard deviation of muscularity; and that, with regard to their relative stoutness, violent offenders do not differ significantly from the non-criminal standard, but that thieves and incendiaries are distinguished by degrees of relative emaciation

⁴ Sleyster, “The Physical Bases of Crime as Observed by a Prison Physician,” *Physical Bases of Crime, A Symposium* (Easton, Pa., 1914), pp 115-116

⁵ *Op. cit.*, p 116

⁶ Goring, *The English Convict A Statistical Study* (London, 1913), pp 196-197

⁷ See p 147 ff

equivalent to one-fifth and two-fifths, respectively, of the standard deviation of this character. We conclude that, in health and strength, individuals who commit crimes of violence are stringently selected; that health and strength have no relation to the committing of fraud, rape, arson and stealing; and that individuals who commit, and are convicted of, the two last-named crimes, are selected by their relative bodily thinness."⁸

Physical Defects and Diseases. Dr. Sleyster says after a study of 1,521 convicts in the Wisconsin State Prison:

"The degenerate and subnormal seem especially prone to diseases of the chest. Active and old pulmonary lesions are extremely common and a large proportion require constant observation and care to guard against active tubercular development. . . . Valvular heart lesions are extremely common

"Defective sight is found in about a third of the prisoners. Astigmatism, strabismus and myopia are relatively frequent. . . ."⁹

It may be thought that some of these physical ailments may be due to imprisonment itself. However, it must be remembered that Goring found no evidence on the basis of his careful investigation of that point in connection with the convicts in the English prison he studied that imprisonment had any bad effect upon the health of the inmates.¹⁰

That there are a few cases of delinquency which may be explained by head injuries and irritation due to eye-strain or other physical difficulties is indicated by every study of cases. These, however, are not numerous enough to play a very important rôle in the making of the criminal.¹¹

Mr. Brockway says that "in an examination of 8,000 at Elmira, New York, Reformatory, Dr. Christian found 25 per cent that show physical injuries mostly upon the head, and other physical disabilities, and disqualifying illnesses . . . together with defects of eyesight, hearing, teeth, and probably of the palate. Twenty-eight per cent of this eight thousand were tuberculous and 43 per cent were, on their admission to the reformatory, affected with some form of venereal disease."¹²

Recent studies have shown that often children who have suffered from encephalitis develop strange personality traits after recovery. Apparently this disease seriously affects the nerve cells and alters the customary reac-

⁸ Goring, *The English Convict: A Statistical Study* (London, 1913), p. 187

⁹ Sleyster, "The Physical Bases of Crime as Observed by a Prison Physician," *Physical Bases of Crime, A Symposium* (Easton, Pa., 1914), p. 117

¹⁰ *Op. cit.*, p. 219

¹¹ Witter, "The Physical Basis of Crime from the Standpoint of the Probation Officer," *Physical Bases of Crime, A Symposium* (Easton, Pa., 1914), pp. 132-133

¹² Brockway, in *Physical Bases of Crime, A Symposium* (Easton, Pa., 1914), p. 135.

tions to life-situations. The very name *encephalitis lethargica* indicates inflammation of the brain, and that the disease results in a lethargy unusual to the individual affected. Other changes in conduct than mere lethargy often appear—an irritability, a quarrelsomeness, stealing, truancy, and other types of misconduct not characteristic of the individual before the attack. Whether these changes in conduct are due directly to the injury done to the brain by the disease or are due to the efforts of the sufferer to overcompensate for a feeling of inferiority due to the after-effects of the disease is uncertain.¹³

Physical Overdevelopment and Crime. Healy found in a study of 823 cases that over 13 per cent had some abnormality of development as one of the probable causes of their delinquency.

In a later study, Dr. William Healy and Miss Augusta F. Bronner found that from 50 to 64 per cent of 2,000 juvenile recidivists in Chicago and from 72 to 73 per cent of the females were overdeveloped physically. They say: "The status of the males is only of interest inasmuch as it shows that crime in our community is not at all the consequence of malnutrition following upon poverty, to which it is largely ascribed by writers in the older countries. Of very great interest is the frequent physical overdevelopment of the young females. There can be no doubt that the common-sense observation of many judges is true, namely, that a girl's sex delinquency frequently is based on physical overdevelopment—perhaps directly causing her attention to be drawn to sex life, as well as leading her to be attractive to the opposite sex."¹⁴ In the case of boys underdevelopment seems to operate through industrial selection which sifts them into the class of common laborers, where they are surrounded by conditions incident to poverty, with all that it entails of poor living conditions, lack of employment, unsteady employment, and incitements to crime. On the other hand, overdevelopment in boys produces restlessness and truancy, because they find themselves in classes with those who may not be younger but are smaller, and in some cases through the lack of balance between mental and physical growth. In the case of girls, overdevelopment physically is often correlated with sexual precocity. In girls this means that an unusual stress is placed upon them by reason both of the effects of physical overdevelopment cited in the case of boys, and also of the effects of the early development of the sex impulse. Over-size without a doubt makes a child conspicuous among its schoolmates and playmates of the same age. In many cases this peculiarity is the subject

¹³ Bond and Appel, *The Treatment of Behavior Disorders Following Encephalitis* (New York, 1931); or same authors, "The Treatment of Post-encephalitic Children in a Hospital School," *American Journal of Psychiatry*, X, 815-825 (March, 1931).

¹⁴ Healy and Bronner, "Youthful Offenders," *The American Journal of Sociology*, XXII, 44-45 (July, 1916).

of remark by schoolmates, more is expected of such overgrown children than of the others, and in many other ways the oversized child tends to be set apart from his mates in a way that affects his feelings and frequently his conduct.

Such a case was Winthrop Standen, Jr., aged fifteen years, eight months. He came from New England ancestry on both sides. He was brought to the Judge Baker Foundation by his parents for advice, since to them he presented a puzzle they could not understand. He was the only member of all their kindred who had shown any lack of high standards of conduct. For two years Winthrop had given them a great deal of anxiety through his misbehavior at school and because of repeated and serious dishonesty. Recently he had been in court for burglary with a companion, and, while still on probation for this deed, was again arrested for breaking into a garage and driving away with an automobile. There had been many other instances of his stealing and of taking automobiles. The boy's indifferent attitude toward his conduct, however, was the disturbing thing to his parents. So far as the families on both sides are concerned there is no evidence of anything but good citizenship.

Winthrop's developmental history shows no peculiarities that would throw light upon the problem. His home was a sensible one with plenty, but no luxury, and an atmosphere of harmony and helpfulness. There are four sisters younger than Winthrop.

As to his associates, Winthrop found desirable friends among the Boy Scouts and other boys in his neighborhood. However, he formed a very portentous comradeship with a boy somewhat older than himself who had been a "notorious scamp" and who had avoided punishment because of the political influence of his family. Through this boy Winthrop formed the casual acquaintance of an undesirable crowd of older boys. His association with girls has been normal and wholesome.

Winthrop's personal habits have been very wholesome. The only two keen interests he has displayed are in his grades and in mechanical things. At the age of eight he could name and put together all the parts of an automobile. While he has had some minor interests such as sports, Boy Scouts, reading boys' books, church affairs, and the activities of a social club, the only lasting interest he has shown is in mechanics. In school he showed a fair amount of interest until he entered high school. When he entered high school at the age of thirteen in the town where he now lives, truancy began and he withdrew. He has not liked the school and has failed to pass for three successive years. It is to be noticed, however, that in the high school his courses consisted entirely of languages and mathematics, none of them appealing to his interest in mechanics. When he was out of school he worked in several places which did not especially interest him. His desire to work in a garage was thwarted because his father believed that

he would there be in the wrong kind of company. Consequently, he has not held a position long at one time.

Turning to the study of Winthrop himself, there is nothing about his physical appearance that suggests a basis for criminality except somewhat heavy features, a comparatively weak mouth and chin, and unusual strength for his age. In spite of the fact that he was not yet sixteen years of age, he was five feet nine inches in height and weighed 155 pounds. His strength was unusual, he had an adult voice, and he showed almost all the characteristics of a grown man. The average weight for a boy of sixteen is 133 pounds and the average height is five feet, seven inches. Moreover, the precocious sexual development shown in Winthrop's case is highly important for an understanding of his delinquency. Physically he had reached the maturity which would be expected in a boy about twenty years of age.

According to the mental tests he graded as super-normal, his intelligence quotient being 116. There were no signs of poor mental balance. His personality traits show that he is a gregarious individual, socially suggestible, easy-going, fond of pleasure, restlessly changeable, resentful of criticism by his family, self-assertive, and argumentative. He has always been unusually refined and clean-minded. Even as a little boy, while he was affectionate and kind to younger children, he was somewhat jealous of them, yet he has never appeared to have an abnormally sensitive nature. His indifference has come out even in his school work where he seemed to be uninterested in his success. He made the impression upon the examiners that, although he seemed sincere, he appears to lack energy commensurate with his size and strength.

Here you have a complex of circumstances which together explain the making of this delinquent. First there stands out the physical overdevelopment and sexual prematurity, and yet the continuance of adolescent mental traits. Furthermore, you have a personality which is particularly suggestible, which taken in connection with overdevelopment, accounts for his being influenced by a crowd of older boys. Add the fact that the real leader of the gang was able to avoid arrest because of political influence. Also there is the fact of being forced to take work in school and work at jobs in which he was not interested, at the same time being prevented from doing the things he likes. This case is a splendid illustration of how, in connection with other conditions, overdevelopment conditions conduct.¹⁵

Healy has provided a large number of illustrations of the fact that early maturity puts a great strain upon the adolescent girl and accounts for many lapses in conduct.¹⁶

¹⁵ *Judge Baker Case Studies*, Series 1, Case 2. For further details on these cases the reader should consult the published records themselves.

¹⁶ Healy, *The Individual Delinquent* (Boston, 1915), Sections 188-191.

The following case from among the 500 cases of sex delinquency in adolescent girls studied by Miss Anne T. Bingham is an illustration of premature physical development in sexual delinquency in girls.

Winnie Ellis, aged 17 years, when brought to Waverly House, was a well-developed and pretty girl. She was born in New York City of Jewish-Hungarian parents. They were married when they came to this country about nineteen years ago. Neither one is in good health. There are seven children in the family, the four oldest being married and having comfortable homes. A brother, aged 21 and another aged 14 live at home. With the exception of the latter, all of these children are healthy.

Winnie graduated from grammar school at 14, never failed of promotion, attended regularly and did good work. Following this she studied stenography and typewriting. Then she worked as a cashier in a restaurant seven months at \$6.00 per week. She was discharged because of "certain irregularities and untruthfulness." Then she became forelady in a yarn factory, where she remained for six months at \$6.50 a week. She was discharged because she was said to be uninterested, incompetent, not punctual, and quarrelsome. Thereafter for two weeks she did clerical work at \$7.50 a week; her work was declared unsatisfactory, and it was reported that she flirted with salesmen who came into the office.

When she was about 17 she became acquainted with a Jewish boy about four years older than she. This boy seduced her in his sister's house and after that, although he frequently talked of marriage, postponed it on the plea of financial circumstances. A few months later he told her he needed some money for his business and persuaded her to try to get some for him, promising to make good. Soon after Winnie took from her brother-in-law's store several articles of jewelry worth about \$200 which she gave to her lover, who pawned them. A short time later her lover deserted her. She wrote him several times but received no answer. Piqued at this treatment, jealous, and also desiring pretty clothes, which she saw no chance of obtaining by proper means, she began a career of promiscuous relations with men.

In the mental examination Winnie showed no evidence of being psychopathic. She was ready and intelligent in her cooperation in the tests. However, it is plain from the study of her that her physical maturity had far outrun her mental development. There is a distinct retardation evident, especially when the higher mental faculties are involved, although she is not mentally defective. She scored a mental age of 12.2. She shows considerable general information, has facility in verbal expression, excellent auditory memory, and the ability to grasp and carry out confusing directions. Motor control is good. The routine work was quickly accomplished in the tests, but in the situations requiring the exercise of reason and judgment she did not do so well. She does not visualize vividly,

and her imagination is not constructive in character. She has shown a tendency to make unwise choices when given an opportunity for independent action.

Her personality traits reveal her as a selfish, wilful, hard, calculating girl, ready to defend herself with little regard for consequences when they stand in the way of her gratification. She is devoid of altruistic impulses and conduct, and her interest in a situation does not extend beyond her own viewpoint. Her overdevelopment and physical attractiveness not only excited vanity in the girl, but probably was an important causative factor in her delinquency by reason of subjecting her to attention and temptation. She has a natural desire for pleasure and gaiety and has not the judgment to discriminate as to how her desires shall be gratified.¹⁷

In certain European studies malnutrition and other physical conditions affecting the physical development of the child have been cited as factors in delinquency. The studies in this country, however, have not shown that these conditions are of very great importance. On the basis of their careful study of 2,000 young recidivists in Chicago some years ago Healy and Bronner say: "What is true for Italy or England in these respects is not at all true for Boston or Chicago. Nothing so well illustrates this as our small proportions of those who are suffering from malnutrition and who are victims of the developmental conditions resulting in so-called 'degeneracy.' "

THE INFLUENCE OF ENDOCRINE OR DUCTLESS GLANDS

A rather recent contribution of medicine to the theory of the causation of crime has been made by a study of the influence of the endocrine or ductless glands upon the growth of the body and upon mental hygiene. These glands are chiefly the thyroid, the thymus, the adrenals, the parathyroids, the pituitary, the pineal, and the interstitial glands.

One case which illustrates the influence of a diseased thyroid is provided by the case of Ethel Murphy, 27 years of age. She was somewhat depressed since having become the mother of an illegitimate child two months before she came to the psychopathic hospital. She was found to have enlargement of the thyroid gland and rapid pulse. At one time she was suspected to have been subject to auditory hallucinations.

When tested mentally, she showed evidences of irregular performance in the tests and graded at about 11 3 years. The only definite evidence of psychosis was the depression and the only cause which could be discovered was the enlarged thyroid. There was no evidence of subnormality or epilepsy. The psycho-

¹⁷ "Determinants of Sex Delinquency in Adolescent Girls Based on Intensive Study of 500 Cases," *Journal of Criminal Law and Criminology*, February, 1923, pp. 499-501

pathic condition may have been due partly to exhaustion as well as to the thyroid condition.¹⁸

It has been found that certain of these glands have an influence upon the growth of the body and on some of its organs. Moreover, these glands seem to be in a cycle, and the abnormal functioning of one of them may throw the whole cycle out of balance. Attention has been called in this chapter to the tendency of sexual delinquency in the case of girls of precocious maturity. Some of those who have studied carefully the functions of the endocrines believe that the secretions of these glands have an important influence upon sexual maturity and that a lack of balance in the functioning of some of these ductless glands affects the sexual life very seriously.

It is also possible in many cases of mental difficulty and mental aberration that the physical basis of the difficulty is to be found in these glands. Bandler says that the relation of the hypophysis to the psyche is very close. He has noticed that the various forms of disease of this gland may produce nervous annoyance and psychic manifestations and states resembling hysteria, neurasthenia, etc.

It must be said with reference to this subject that the problem of the influence of the ductless glands upon conduct and especially upon delinquency is not yet settled. A number of students of the question are much more conservative than Bandler. One example is Professor Hoskins. In a paper before the American Association for the Advancement of Science he wrote that as the result of the recent interest in the functions of these glands "a large body of literature has accumulated which, for its vagaries, fantastic exuberance and wholesale marvel mongering is perhaps without a peer in the history of modern science." Nevertheless, he concludes, "in truth, however, the substantiated reality is wonderful enough. When we see misshapen, stunted imbeciles transformed to normal, happy children, diabetics starving in the midst of plenty restored to health and strength, giants and dwarfs produced at will, sex manifestations engendered or reversed before our eyes by control of endocrine factors, who can regard endocrinology as other than a most significant phase of modern biology?"¹⁹ We shall not be going beyond the sound results of scientific investigation of the influence of these glands if we say that certain of them have a demonstrable influence upon imbecility, giantism, and dwarfism and upon the development of the sexual

¹⁸ Southard and Jarrett, *The Kingdom of Evils* (New York, 1922), Case 66, pp. 276-277.

¹⁹ Hoskins, "The Functions of the Endocrine Organs," *Scientific Monthly*, March, 1924, pp. 257-258. See also Lipschutz, *The Internal Secretions of the Sex Glands* (Baltimore, 1924).

life. Upon that basis, while we are waiting for more light upon the relation of the endocrines to delinquency, may we not conclude that so far as these glands affect physical and mental development they probably have an effect upon conduct?

While it is impossible to say in how large a percentage of the delinquents there is lack of balance in these important organs, it is suspected that their abnormal functioning has in some cases the effect of destroying normal conduct. Consequently these physical factors which affect the growth of the body and the brain and also affect various organs which have rather close connection with mental health help to explain in some cases the tendency toward criminality and in other cases provide the physical explanation of the mental conditions which result in pronounced criminality.

As an illustration let me summarize a case described by Fay. This was a young man of twenty-three by the name of Ulster. He is described as a restless, unkempt, unhappy fellow. In the endocrine ward of the hospital in Washington, D. C., his case was diagnosed as hyperthyroidism, that is, an overactivity of the thyroid glands. After growing up he worked in a shipyard and then was drafted into the army when the World War broke out. During his army experience he became restless and depressed and was reclassified and put into another unit, but he grew steadily worse and was sent to a hospital and eventually reached St. Elizabeth's in Washington.

He was crazy on sex subjects. It is possible that his experiences in the army may have had something to do with the breakdown. Much of his talk to the investigator was pure vulgarity, yet he had a feeling of sin and remorse and thought he ought to be punished and even thought of committing suicide. He, however, feared others would punish him or kill him. He says that on the trip home from France he thought of throwing himself overboard. In the hospital he made improper advances to the occupational therapist and the women nurses. The mental diagnosis showed him suffering from manic-depressive insanity with schizophrenic features²⁰. It is now believed that overactivity of the thyroid glands has a stimulating effect upon the personality and it is therefore easy to see why he should be perpetually talking, restless, and sexually overactive.

QUESTIONS AND EXERCISES

1. Lombroso said that he could go into a crowd of people and by observing their physical characteristics tell which ones have committed or will commit crime. What do you think of that statement?

²⁰ By "manic-depressive" insanity is meant a kind of mental derangement in which there is an alternation between undue excitability and depression. By "schizophrenic" is meant a "split" personality, an extreme case of which is described by Stevenson in his *Dr. Jekyll and Mr. Hyde*.

- 2 Of what value in the study of criminals are the "stigmata of degeneration"?
- 3 If prisoners in general are smaller in stature and lighter than non-prisoners of the same age-group as found by Sleyster, or if all but criminals by violence are smaller and lighter than the free population, how do these physical conditions operate to produce criminality?
- 4 Point out in the cases given in the text how physical conditions do not operate alone to produce misconduct In what sense then are they factors of criminality?
- 5 Look through newspaper files and medical journals for further illustrations of the influence of physical conditions in producing criminality

CHAPTER VII

MENTAL FACTORS: MENTAL DEFECT, CONSTITUTIONAL INFERIORITY, AND EPILEPSY

ANY attempt to understand criminality which ignores the progress of psychology and psychopathology is bound to leave us in the morass of vague generalities characteristic of the criminology of a generation ago. While the findings are subject to revision with further advance of knowledge, to-day we understand better than ever before the underlying and often hidden mental factors in criminality.¹

Psychiatrists and psychologists have been studying unusual mental characteristics in their relation to the commission of crime. Among these mental abnormalities are mental defect or feeble-mindedness, epilepsy, constitutional inferiority, dementia *præcox*, and certain other insanities. These abnormalities seem to be connected with anti-social conduct in some persons. Every study which has been made of the mentality of delinquents shows a certain number characterized by these abnormalities. Psychoanalysis has revealed that even some normal minds, through experiences early in life, develop fears and obsessions which sometimes work out in anti-social conduct.

CRIME AND MENTAL DEFECT

Every new discovery throwing light upon hitherto dark places in human knowledge is always overemphasized at first. In the course of time the over-

¹ Even Jeremy Bentham suggested that criminals were mentally abnormal. He says, "Delinquents, especially of the more criminal descriptions, may be considered as a particular class of human beings, that, to keep them out of harm's way, require for a continued length of time that sort of sharp looking after, that sort of particularly close inspection, which all human beings without exception, stand in need of up to a certain age. They may be considered as persons of unsound mind, but in whom the complaint has not swelled to so high a pitch as to rank them with idiots or lunatics. They may be considered as a sort of grown children, in whose instance the mental weakness attached to non-age continued, in some respects, beyond the ordinary length of time." He adds this note to this passage "Policy, or I am much mistaken, the deepest and steadiest policy, will be found to concur with the tenderest humanity, in regarding the criminal world in this instructive and unimpassioned point of view. To an eye thus prepared, the most profligate offender will present—on the one hand, no fitter object of unprofitable resentment; on the other hand—no less necessary object of preventive coercion, than would be presented by a refractory patient or a forward child"—*Works* (Bowring Edition), IV (Edinburgh, 1843), 173, 174

emphasis is corrected by the discovery of certain facts which place limits upon the application of the discovery. This generalization is illustrated in the connection made between crime and mental defect. After the invention of the Simon-Binet tests had provided a means of measuring mental attainment, in the first flush of enthusiasm it was felt that mental deficiency was perhaps the most important single cause of criminality. With great labor and perseverance students sought to ascertain how large a proportion of our delinquents and criminals is feeble-minded. Naturally, they went to the institutions in which convicted offenders were incarcerated. What they found there seemed to indicate that at last there had been discovered a very important explanation of criminality. In Germany, for example, Aschaffenburg said:

"The fact that the intellectual capacity of the criminal is far below the average has already been the subject of detailed discussion. The experience of teachers and overseers in penal institutions fully confirms it . . . A superficial examination of 405 prisoners with sentences of over six months showed me that apart from 31, whose mental state I shall speak of later, 67 were more or less feeble-minded, certainly far below normal in their intelligence; eight or ten were decided imbeciles, almost idiots. . . . I must confess that, after reading the papers in the case, I was often prepared to see a rough brutal man, when, in reality, I found a quiet, docile, even good natured feeble-minded fellow. This is true not only of those who are sentenced for the first time; precisely among people with long criminal records I have often found such quite feeble-minded persons; by this I do not mean imbeciles of such defective mentality that our exacting laws would classify them as irresponsible "²

Likewise, in England Goring and Sir Bryan Donkin made high estimates of the proportion of prisoners who were mentally defective, Goring placing his estimate at 10 per cent and Donkin at 20 per cent.³ Goring in studies of the inmates of Parkhurst Prison found the percentage of feeble-mindedness varied according to the type of crime committed. He says, ". . . mental defectiveness is associated the most intimately with stackfiring, but also to a very large extent with all crimes of malicious damage to property, and with unnatural sexual offenses; that it characterizes, in less degree, crimes of violence not associated with robbery; and that it is entirely dissociated, within the limits of our sample, from such crimes as embezzlement, forgery, etc., classed by us under fraud; in fact . . . with the exception of those

² Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp 179, 180 (Copyright by Little, Brown and Co, 1913. Reprinted by permission)

³ Hobhouse and Brockway, *English Prisons Today* (London, 1922), pp 15, 18

technically convicted of fraudulence, all criminals are pronouncedly more mentally defective than are law-abiding persons in the general population."⁴

Likewise in the United States investigators found in different institutions widely varying percentages of the inmates feeble-minded. Burnett thought 30 per cent a conservative estimate of the feeble-minded among our prisoners. Dr. Wiedensall thought she found 40 per cent of eighty-eight women given mental tests at Bedford Reformatory less capable mentally than the average Cincinnati working girl of fifteen. Goddard, one of the pioneers in this field in the United States, estimated that at least 50 per cent of all criminals were mental defectives. Other investigations varied from as low as 12 per cent to as high as 82 per cent. Curiously, the earlier studies gave higher percentages than the later. Nevertheless it is apparent, as Sutherland has pointed out, that these percentages, even when given by mental testers as the result of approved tests, are really tests of the testers rather than of the tested.⁵

As one studies these reports he is forced to the conclusion that as time has gone on investigators have come to more conservative conclusions with regard to the percentage of the inmates of penal and correctional institutions who are mentally defective. Reaction against the findings of the early investigators came out particularly as the result of a comparison between the mental ratings of prisoners and the drafted men in the United States Army. Before the World War there had been no widespread study of the mental level of any large section of the general population. The publication of the results of psychological testing in the army provided a basis of comparison between the ratings of prisoners and those of the drafted men. As a consequence such men as Dr. Adler, who compared the results of psychometric tests of Illinois prisoners with the results of tests applied to the army draftees, and Professor Stone, who compared the intelligence rating of inmates of the Indiana Reformatory with men in the army draft from Indiana, and especially Professor Murchison, who compared the intelligence level of prisoners in various parts of the country with that of a sample of 44,000 drafted men, found the prisoner much more intelligent than did those who previously had assumed that 2 per cent of the general population is feeble-minded.⁶

⁴ Goring, *The English Convict. A Statistical Study* (London, 1913), p. 258.

⁵ Sutherland, "Mental Deficiency and Crime," in Young, *Social Attitudes* (New York, 1931), Chap. 15.

⁶ For the earlier period characterized by rather high percentages see Goring, *The English Convict. A Statistical Study* (London, 1913), p. 259; *Social Hygiene Bulletin*, April, 1922, p. 7; Wiedensall, *The Mentality of the Criminal Woman* (Baltimore, 1916), quoted by Adler, *American Journal of Sociology*, November, 1917, p. 408; Goddard,

One of the later studies of women which has corrected the overstatement of the early studies says,

"With regard to intelligence, all indications are that the group of delinquent women is somewhat inferior to the general population, though the difference is slight and the overlapping large. This statement holds, though in varying degrees, whether we consider the separate sub-groups or the composite group. It should be noted, however, that our data have indicated less extreme distinction, with respect to intelligence, between the delinquent and the non-delinquent groups than that urged by many recent investigators, notably Goring. The most that we are prepared to say is that, other things being equal, there is apparently a greater presumption in favor of delinquency in a group of women who are below the average in intelligence than in a group above the average."⁷

It should be pointed out that the intelligence level of the army draft men was very much lower than we had been led to expect before it was actually made. Consequently that necessarily reduced the intelligence level which had been assumed to be normal and in a like measure decreased the percentage of prisoners who were thought to be feeble-minded.

In these cases it must be remembered that both in the earlier and in the later studies, except those by Healy and Anderson, the tests were supposed to test intelligence. They do not attempt to test temperament and emotional organization, which play perhaps a greater part in direct criminal causation than intelligence. This is clearly recognized by Fernald, Hayes, and Dawley.⁸

Feeble-Mindedness, Its Causes and Consequences (New York, 1914), p 569; *United States Public Health Bulletin*, No 77, June, 1916, p 103, Bisch, "Feeble-Mindedness in Criminals," *The New Republic*, LVIII (1916), 66, Haines, "Feeble-Mindedness Among Adult Delinquents," *Journal of Criminal Law and Criminology*, January, 1917, p 720, Anderson, *A Report of the Mental Deficiency Survey* (Madison, Wis, 1920), pp 1-27; Barnes, *Journal of Criminal Law and Criminology*, XIII, 202 (August, 1922, Jacoby, "The Psychopathic Clinic in a Criminal Court Its Uses and Possibilities," *Journal of the American Judicature Society*, June, 1923, p 24, Bingham, *Journal of Criminal Law and Criminology*, XIII, 540 (February, 1923), Anderson, *Mental Hygiene*, III (1919), 177-198, Doll, "The Comparative Intelligence of Prisoners," *Journal of Criminal Law and Criminology*, XI, 192 (August, 1920). On the more recent studies see Karpman, "The Psychopathic Individual A Symposium," *Mental Hygiene*, January, 1924, pp 174-201; Stone, "A Comparative Study of the Intelligence of 399 Inmates of the Indiana Reformatory and 653 Men of the United States Army," *Journal of Criminal Law and Criminology*, August, 1921, p 256, Fernald, Hayes, and Dawley, *A Study of Women Delinquents in New York State* (New York, 1920), p 527, Murchison, "American White Criminal Intelligence," *Journal of Criminal Law and Criminology*, August, 1924, pp 239 ff, and November, 1924, pp 435 ff.

⁷ Fernald, Hayes, and Dawley, *A Study of Women Delinquents in New York State* (New York, 1920), p 527.

⁸ *Ibid*

It must not be forgotten also that Murchison's figures are based upon the Alpha group test of intelligence, upon which some doubt has been thrown as a test of native ability rather than of culture,⁹ and that Murchison compared native white criminals with native and foreign-born draft men.¹⁰ Furthermore, Adler included many women and Negroes in the institutions which he studied, but as a sample of the non-criminal population with which to compare them he selected the principal sample of the whole draft instead of the Illinois draft. Erickson¹¹ compared the criminals he studied in Wisconsin with the 2 per cent estimate of feeble-mindedness in the general population made by the American Association for the Study of Feeble-Mindedness and used as a criterion for feeble-mindedness a mental age of twelve or less. Zeleny has attempted to reinterpret the findings of these three men—Murchison, Erickson, and Adler—on a comparable basis. He does so by reducing their respective findings to a percentage of feeble-mindedness below the mental age of eleven, and compares these findings with the percentage below the age of eleven in the general population as represented by men in the draft. Of the draft men Zeleny takes the findings of the draft in the five States in which the criminals were studied by Murchison, for Erickson's findings he takes the Wisconsin draft, and for Adler's the Illinois draft. As a result he finds that the percentages of these three men when reduced to this comparable level are not far apart. The ratio of inferiority of criminals in institutions studied by these three men becomes 1.26 per cent for the criminals as compared with 1 for the general population. In all three cases the criminal population is slightly inferior to the general population as represented by the draft men.¹² Consequently, in the light of our present knowledge it appears that feeble-mindedness is associated with delinquency and criminality to only a slight extent.

Whatever be the truth concerning the sameness or difference in nature between the criminal and the non-criminal, and however that "nature" was produced, whether by inheritance or by the response of the organism to life-experiences, or whether partly one and partly the other, it appears probable that some people respond to a given set of circumstances in one way and others in a different way. The evidence suggests that the reason for this difference of response is either difference of inherited traits manifesting them-

⁹ Kroeber, *Anthropology* (New York, 1923), pp 75-79

¹⁰ Murchison, *Criminal Intelligence* (Worcester, Mass., 1926), Chap 4

¹¹ "A Study of the Relationship between Intelligence and Crime," *Journal of Criminal Law and Criminology*, XIX (1929), 592-625

¹² Zeleny, "Feeble-Mindedness and Criminal Conduct," *American Journal of Sociology*, January, 1933, p 575, Table IV

selves in intelligence, emotion, and temperament, or differences in organization of responses to environment by reason of varying experience.

It seems probable that in some cases the set of the personality is such that no matter what the circumstances of life some individuals will respond in accordance with the conventional social standards while others will as certainly respond in anti-social fashion.

The cases indicate that many of those with apparently abnormal personalities will not become delinquent if they live in the right kind of associations.

Furthermore, we must remember that we are probably just at the beginning of the study of the factors determining character and conduct. While the studies of the psychiatrists have thrown a great light upon some of the puzzles of conduct, the treatment of conduct-problems presented by delinquents must be determined by the results of experience in actual dealing with cases. While investigations as to the causation of disease have revolutionized the practice of medicine, we must not forget that while based upon all the knowledge of causation available, the practice of medicine is an art dependent not only upon knowledge of causes, but also upon the skill of the practitioner. The analogy holds in the treatment of the delinquent.

The psychological studies are valuable in throwing light on trends in social causation. They bring out in a large way the weight of some of the factors in criminality. In performing this service they have done all that can be expected of them. They do not reveal the delicate and complex ways in which defects in the individual and his circumstances combine to produce a given result in conduct. Only as we see the play of these two sets of forces actually at work in the flesh and blood of a case can we understand the ways in which individual defect is woven into the pattern of conduct. Fortunately an increasing number of case studies of delinquents is being made each year. In making these records psychologists, psychiatrists, and social workers are using the best scientific methods yet devised.¹³

¹³ Dr William Healy was the pioneer in this country in attempting to build a criminology and penology on the basis of a study of cases to which all the resources of psychiatry and social case work had contributed information of the causative factors in delinquency. His book, *The Individual Delinquent*, marked a new departure in the study of the delinquent. He has followed up that publication with a series of case records from the Judge Baker Foundation of Boston, of which he and Augusta F. Bronner are the directors. Another publication which contributes a series of case records in delinquency, and on which I have drawn in this and the following chapters, is Drucker and Hexter's *Children Astray*. Also in Southard and Jarett's *The Kingdom of Evils* a number of cases are given of value to the student of conditions which produce criminality. To all of these grateful acknowledgment is made for the privilege of using certain facts in the cases they give. See also Wile, *The Challenge of Childhood* (New York, 1926), pp. 69-227.

In these cases the factors of delinquency in the personality of the individual and the factors in bad home conditions, evil associates, and the wrong kind of management by parents and others who have had control of the child are mixed up together.

CASES OF MENTAL DEFECT

As one reads case histories of delinquents, he is met with the rather frequent mention of the mental defective

The Fred Tronson Case.

Dr Goddard has studied three cases of criminal imbeciles in order to show how mental defect leads to crime. One of these cases is that of Fred Tronson of Portland, Oregon. At the time of committing the murder he had lived in Portland for two years, during which he had held seven different positions as elevator man. When he was twenty-four, in August, 1914, he met and fell in love with Emma Ulrich, a stenographer. He asked her to marry him and when she refused he threatened her and, upon complaint, was brought before the authorities and ordered to leave town and not annoy Miss Ulrich further.

On November 16th he came back to Portland, waited for her on the street near her home and when she stepped off the street car he again asked her to marry him. Frightened, she ran toward her home. He followed, shooting at her as he went, followed her into her house and there killed her. Since Oregon had abolished the death penalty, he could be sentenced only to imprisonment for life. During the trial he had been examined by two alienists, pronounced sane but of low mentality. Examined also by a psychologist, he was found to have the mentality of nine years. His social history confirmed his low mental grade. According to his mother, he had never been able to hold a job more than two or three months. Furthermore, his conduct at and before the trial in the judgment of Dr Goddard was that of an imbecile. For example, when examined at the police station, he seemed to be in great fear that someone outside would do him harm. During the course of selecting the jury and while testimony was being taken he slouched in his chair with sunken eyes grinning at each witness and with his mouth hanging half open as though he barely understood what was going on. He signed a confession, which shows his simple-mindedness and the lack of cunning characteristic of the imbecile.

After his arrest for annoying the girl he was kept in Portland about a week and then released with the understanding that he was to go out of town. Judge Stevenson told him to go out to the harvest fields and take a good sweat and when he came back and looked for another job he would be all right. He went the next Monday, stayed a few days, could not get anything to do, came back, waited around about two weeks and then went to Hood River where he picked apples for a time, remained there about ten days and came back because he could get no further employment.

This decision to kill her he came to the previous week. After making up his mind to that effect he went to Vancouver and bought two guns. He confessed that he intended to shoot her. He came back immediately to Portland after buying the two guns, each at a different store so that they would not suspect him of anything. He says he wanted two so that if the one did not work, the other would. He loaded the guns in South Portland and walked to the street corner at which he knew she would alight from the street car, and he stood around only a few moments until she appeared, a little before six o'clock. When she got off he approached her and said "Wait a minute." In his confession he says he wanted to talk to her and ask her for the last time if she would marry him. He said she started running and "hollering." This was about half a block from her home. He followed her, he confesses, as she ran around the house to the back and just before she went in the back door he commenced shooting. He fired one shot before she went in, and following her into the house he fired four more. She ran into the bathroom to which he followed her where "she began to crunch down, then she fell on her face like a board and struck her head on the floor. I thought she must be dead or unconscious or something like that I left then. I took it for granted she was dead." He confesses that he was sorry he had to do it but that he was determined that no one else should have her if he couldn't. He says that she told him once she liked him, that he had acted like a gentleman, and that he had given her one present, and he didn't see any reason for her turning him down.

After killing her he ran out the door down a street and in his excitement dropped in the grass the gun with which he had done the shooting. He got a car to Vancouver, attended a motion picture show for half an hour and went to a rooming house where he stayed all night. He confesses that he lay awake and didn't sleep at all because he was nervous at having killed her. The next morning he went out the Pacific Highway with the intention of getting the papers to see if he really had killed her. If he had, he says, he intended to go back and shoot himself at the same place he shot her. After reading in the papers that Miss Ulrich was dead, however, he kept going in the opposite direction from Portland because he says he did not want to run into the police. His intention was to go around Seattle and Tacoma and "cross over and come back around." He says he feared that bloodhounds would be sent after him and that he would get shot down in the road. He insists that he wanted to get back to the spot where he had killed her, so that he might there shoot himself.

On being questioned by the officials he says that he knew it was wrong to kill her, but "all I was thinking about was about her." On being asked whether he did not know it was wrong to take that which he could not give, and that it was doing wrong when he went over to get the guns, he replied, "I didn't take it very serious then like now."

This case brings out very clearly that mental defect may provide a basis on which evil surroundings may work disaster.¹⁴

¹⁴ Goddard, *The Criminal Imbecile* (New York, 1915), pp. 67-81.

EMOTIONAL IMBALANCE

That delinquency is often the result not of a lack of mental ability as measured by intelligence tests but of some lack of coordination between the intellectual qualities and the emotional make-up of the person comes out in the case of Richard Dowling, age sixteen years, ten months.

The Richard Dowling Case.

Richard had been guilty of serious thieving for years. After being four times sent to institutions, he repeated his delinquency. For these delinquencies he had been committed to schools for delinquent boys in two States and returned to each for further delinquencies while on parole. While the family background, so far as known, provides no basis for delinquency in the heredity, the knowledge of the different members is not as complete as could be desired.

Richard is the oldest of six children, three boys and three girls. None of the others has shown any delinquent tendencies. In his developmental history there is nothing peculiar.

Moreover, the home conditions all seemed to be favorable. While he went with bad companions, his sister said none of them were as bad as Richard and he had never associated with them for long intervals. He had the normal associations with boys of his own age and many of the normal interests of childhood. He did not contract any of the vices of youth, and yet he had been constantly delinquent.

Richard began his stealing at about twelve years of age. Because of his father's standing in the community, when he was arrested he was not taken into court until after a number of months. Five months later, on his second appearance with companions, for stealing, he was given a suspended sentence to the correctional school and one month later was arrested again on a larceny charge, when he was committed to the institution. His father says that he never stole at home and has been trustworthy there in all ways. His father has made restitution in many cases when he stole. After repeated experiences in correctional institutions, paroles and return to the institution, he would at the first opportunity snatch some woman's purse and run away. In the institution, it was said by the superintendents that he was a good inmate, courteous and willing, was allowed much liberty and was given some responsibility. Finally he stole keys, secreted them and escaped from the institution, although he had but two or three weeks to remain there until he would have been let out. On this occasion he was not found for almost a month, when he came into the Municipal Court of Boston for robbery, having taken a traveling bag from beside its owner in a restaurant. This time he remained in jail for two weeks before he gave his correct name and age.

When taken into the clinic, a physical examination showed him normal physically. As the result of the psychological examination, he showed an intelligence quotient of 97, with no signs of mental defect; nor was any evidence found of

lack of mental balance. As far as the record shows, the personality traits were those of a wholesome, normal boy. There is no evidence in his history of tantrums, restlessness or particular likes and dislikes of food. He had no peculiar habits of any kind. He was not particularly lazy. He was well-liked by people who knew him, making friends quite easily; he never showed any penchant for vice or indecency. At the institution, strange to say, he seemed to show little dislike for his confinement. It is said, however, that it was difficult for him to stand steady routine. At the clinic he made a favorable impression with his polite, boyish, direct and almost ingenuous attitude. The examiner remarked his unusual control under the circumstances, showing exceptionally little emotional reaction to the whole situation. He noticed particularly an absence of furtiveness or any suggestion of sneakiness. On the other hand, there was no particular suavity shown by Richard, but he gave an impression of being spontaneous, sincere and genuine.

In Richard's own story to the examiner at the clinic, he says that he began stealing when about twelve. At the time he was going with a boy, Albert S., of about the same age. They did a great deal of stealing before they were brought to the court. His first stealing was a ball from the Five and Ten Cent Store and, after being caught and scolded, a bat and various small things like toys, pencils, and candy. They were all with Albert S. and occurred during vacation when he had nothing to do. After these first few weeks of stealing with Albert, he never stole with anyone. Henceforth his delinquency was committed alone. He says he never thinks of stealing beforehand. He sees something he wants and grabs it. He himself volunteered the information that he supposes his conduct was due to what "you'd call an impulse." He is certain that he has not been influenced in his conduct by what he has seen or heard other boys do. He says he has heard about stealing, picking locks, etc., but he never thought about it afterwards and never tried to copy it. He expresses appreciation of his father and says of his mother that she is too lenient with him and lets him get away with things.

During this interview, Richard claimed that most of his trouble occurred when he was idle, either during vacations or, more recently, between jobs. He says that he was not uncomfortable in the jail. He furthermore remarks that he never worries about his troubles, that he takes things as they come and makes the best of them. He says that sometimes when he feels the impulse to steal he resists the temptation and then perhaps ten minutes later he goes back and takes the thing. He himself thinks he ought to go to the reformatory for men, even if he would have to stay in a cell part of the time. He thinks he would do well in the reformatory and get out quickly. He also confesses he does not think that anything will help unless he changes his character and helps himself.

On the whole, it seems probable that Richard stole on the basis of an impulse which was generated at the age of twelve and has repeated because of these early-formed mental associations. The strange thing in the case

is that punishment has seemingly had no effect upon this boy. He seems to have been very comfortable wherever he has been placed, has made friends, and has adapted himself to the circumstances as they came up. The whole situation presents a strange lack of emotional response to his situation. Certainly there is a lack of emotional reaction to his difficulties which may be the result of some hereditary defect in his make-up, although nothing significant was discovered, or it may be the result of a stoic attitude to a situation which he philosophically accepts.¹⁵

EPILEPSY

Ever since Lombroso's day it has been impossible to ignore epilepsy as a factor of criminality. There are four main varieties of epilepsy: (1) Major epilepsy or *grand mal*. In this form there is always unconsciousness accompanied by the loss of coördination of the muscles and characterized by a fall and convulsions. It is from this variety that epilepsy gets its name. (2) Minor epilepsy, or *petit mal*. In this type consciousness may not be entirely lost, but there is usually some jerking and sometimes the subject falls. However, there may be only a sudden lack of ability to move and a lapse of consciousness for a few seconds. (3) Psychic epilepsy. This variety does not disturb the muscular functions. There is a sudden but temporary lapse of consciousness, sometimes also a dulling of the apperceptions, and a loss of memory. The seizures may be only momentary or may last for some time. In this state the subject often automatically acts in response to his surroundings and his impulses. (4) Jacksonian epilepsy. This is sometimes called local or partial epilepsy because it involves in convulsions only one part of the body. Frequently this occurs without disturbing the consciousness. This fourth variety is less of a factor in producing crime than the other forms. Healy points out that there are certain epileptic equivalents, strange psychophysical phenomena due to paroxysmal disturbances of various nerve centers. He also points out how a violent temper may be an epileptic equivalent. Attacks of bad temper frequently seem to run in epileptic families.¹⁶

While Lombroso was inclined to believe that epilepsy is a very important factor in producing criminality, describing one great class of criminals as "epileptoids," more recent study of the matter seems to show that it is a less important factor than he believed.¹⁷

¹⁵ Judge Baker Case Studies, Series 1, Case 19.

¹⁶ Healy, *The Individual Delinquent* (Boston, 1915), pp. 415, 416.

¹⁷ Lombroso, *Crime, Its Causes and Remedies* (Boston, 1912), pp. 369-372; Ferrero, *Lombroso's Criminal Man* (New York, 1911), p. xvi

Healy has made the most careful study of the relation of epilepsy to criminality in his studies of the juvenile delinquent in Chicago. In his series of 1,000 cases of young repeated offenders, 7 per cent were known to be definitely epileptic, while there was doubt as to a number of other cases.¹⁸ Since there are only about two epileptics to every thousand inhabitants in the United States, epilepsy appears in cases of juvenile criminals over thirty-five times as frequently as in the general population.

The mental peculiarities of epileptics help to explain why they become criminal more frequently than normal people. According to Healy these mental peculiarities are: (a) Strange variabilities in mental functioning; to-day the epileptic may be seemingly as normal as any one else; to-morrow he may manifest an entirely different mental character. One day he may show a high degree of mental capacity and the next he may appear to be mentally dull. Moreover, this variability extends also to fluctuations of mood and entire disposition. (b) The remarkable general characteristics typical of the epileptic, such as tendency to emotionalism, but with much inconsistency in his feelings; irritability, either constant or manifested in a sudden burst of anger and vicious conduct, sometimes the assumption of a virtuous attitude accompanied by moralizing or preaching; at other times the utmost cruelty; sullenness; bad temper; impulsiveness; egocentric tendencies; obstinacy; lack of ethical perceptions; frequently an overdevelopment of the sexual life. (c) Mental peculiarity connected with general deterioration, including loss of mental power, affecting the perceptions, the will, the finer ethical discriminations, and the moral inhibitions¹⁹

From these characteristics it is apparent how easily the epileptic gets into trouble. Social conditions and habits operate upon him as upon other personalities. One of Healy's cases will illustrate the way in which epilepsy produces criminality.

This was the case of a young man eighteen years of age who had been under frequent observation for three years. So far as could be learned there was no insanity, feeble-mindedness, or epilepsy in either of his parents' families. At about two years of age he began to have fainting spells. These continued, but varied in their character from time to time. In the year before Dr. Healy saw him he had had six attacks in which he fell and bit his tongue. Sometimes he had attacks in which everything went black before his eyes.

In mental capacity he was found to vary a great deal. At certain times he was extremely dull, while at other times he would talk about the possibility of

¹⁸ *Op. cit.*, pp. 147, 416.

¹⁹ *Op. cit.*, pp. 417-419

his becoming a lawyer. In certain things he did fairly well, but in other things very poorly.

His delinquency also showed variable types of behavior. He has stolen both from members of his family and from other people; he has quarreled a great deal with his brothers and even threatened their lives. He attempted once to cash a check which he had taken from the family mail box; he had also been immoral. He tried to wreck a train but the attempt was prevented by the obstructions being discovered by the railroad people. He seemingly remembers his actions in attempting to wreck the train, but is unable to give any motive. He had no grudge against the railroad people or any one on the train. His memory was a blank for quite a while before this attempt. His feeling is that the act was the result of a sudden impulse which he cannot explain. He said that he feels strong impulses on occasion to commit other deeds of crime.²⁰

One of the most bloody crimes committed a few years ago in Iowa was that of an epileptic who had been confined in one of the state hospitals for the insane. During the night, it appears, that he had an attack, escaped from the institution, and clad only in his nightclothes walked several miles through the snow until he came to a farmhouse, where a man and his wife and several children were sleeping. He procured an axe, killed all the members of the family, then wandered off and the next morning was tracked to a haystack where he was found asleep and nearly frozen. When awakened he knew nothing about the events that had occurred since he went to bed in the hospital. When shown the bloody axe and his tracks from the house to the haystack he was astonished beyond measure. There is no question that this terrible deed was committed during a seizure.

The annals of crime contain many cases like those cited above and gruesome stories of rape and other offenses committed by epileptics. The relation of epilepsy to murder and other crimes suggests the importance of proper care of this class of unfortunates. Inasmuch as epilepsy manifests itself in childhood or early youth, it is possible to prevent crimes by this class, whereas it is not always possible to foresee and prevent criminality by the insane.

PSYCHIC CONSTITUTIONAL INFERIORITY

Another type of offender, not as numerous as some of the others, is the psychic constitutional inferior. By this term is meant those who show chronic abnormal social and mental reactions to the ordinary conditions of life, but who cannot be classified in any group of the insane, neurotic, or mentally defective.²¹ Some of these offenders later show evidences of insanity.

²⁰ *Op. cit.*, pp. 420-424.

²¹ Healy, *The Individual Delinquent* (Boston, 1915), p. 575. "The term constitutional, as qualifying psychopath, is unfortunate, because it indicates that necessarily the

The signs of this class are extreme selfishness, irritability, suggestibility, mental fatigue easily induced, and the ease with which they commit anti-social acts. Healy and Ziehen have noticed that often they show the stigmata of physical degeneracy besides poor physical development. delayed puberty, dwarfism, infantilism, and disproportionate development of body members. Often also appear tremors, twitching of the facial and other muscles, attacks of dizziness, and defects of the special senses. Socially they manifest inability to meet the demands of social life, growing out of a feeling of impotence, although they express good intentions.

A case illustrative of this type of offenders is furnished by Samuel Anders.

The Samuel Anders Case.

Samuel Anders, a little over fifteen years of age, was born in the United States of an American mother and of a father whose birthplace is unknown. The police in Portland, Maine, arrested him as a vagrant. He was, however, a Boston boy and so came under the eyes of the Judge Baker Foundation. A social agency in Boston had had great difficulty with him for a number of years.

The boy was an illegitimate child. Nothing was known about his father. Sam's mother was a rather rough and wild young girl, fond of company and lazy. She attended public school until fourteen and was a good student. She then left school and began to work in a mill, but on account of dislike for the work left it and took up housework at Gloucester. When twenty years old, she returned to her mother with a young baby. After finding a foster home for the child, she returned to Gloucester, married a man named William Gilkey and took the baby home. Gilkey was cruel and abusive and deserted her three years later just before a second child was to be born. Shortly after, she died at the home of her mother, before the second child was born.

Sam remained with his grandmother for a time and then was placed in various homes. Usually he was returned to the placing agency because of misbehavior or because it was felt that the home was not a proper place for him. From that time until he ran away from the home of an uncle who had become his guardian he was in seven different homes. It was from the last one, his guardian uncle's, that he ran away to Portland where he was arrested.

As a baby he seems to have suffered from rickets and possibly also from congenital syphilis. However, he became quite healthy, although as late as 1915, in a physician's office, he had some kind of an attack which the physician felt might be due either to epilepsy or chorea.

The records report him as dirty and slovenly about his person, sometimes offensive in his household habits. The families had great difficulty in getting condition is congenital and inherited and therefore hopeless"—Dr. William A. White, *Mental Hygiene*, January, 1924, p. 176

him to wash, and he had very disgusting table manners. He was a restless sleeper and had a very ravenous appetite, especially for meat. He had learned bad sex habits from a boy in his first foster home. In his early childhood he was extremely fond of tearing things to pieces. At thirteen he joined the Boy Scouts and was very proud of his membership. He was exceedingly fond of motion pictures, spent much of his time reading, especially Jesse James stories, was fond of dressing up, making soldier caps out of newspapers or his aunt's old hats. For years he was going to be a sailor. He had a good voice and for a while he was a member of a church choir, until his conduct made him a nuisance. He was not fond of organized athletics; never went swimming, but was fond of rowing. He showed very little interest in girls. At one time he delighted in making up yarns. When younger, at about the age of thirteen, he was the leader of a crowd of boys that met in a cellar and associated with a bad lot in the neighborhood. As far as the records show, he had no special chum and was not influenced particularly by any other boy.

At school he did fairly well in some studies, in others poorly. He was lazy, and after the first year his marks for conduct were poor. After reaching the sixth grade at twelve years of age, the next year he was demoted to the fifth grade. In the midst of the term he left school and worked in a mill for a short time at \$5.00 per week as a cleaner, but was discharged because of unsatisfactory work. His longest term of employment was five weeks. Delinquency was developing throughout all this period; it consisted chiefly in destroying things and lying.

Physically he is small but seems older than his years because of the maturity of his features. His attitude is slouchy and listless, his voice low and unenergetic. There are various other signs of some physical abnormalities. He was over-developed sexually, and there was noticed a slight tremor of the outstretched hands and sometimes a quiver of the upper lip. He complained of occasional sharp pains in the temples and colors at times appeared before his eyes. Other physical characteristics seemed normal, except the shape of his head and face, which showed certain stigmata which may possibly have been the result of rickets and syphilis early in his life. The tremor of his hands and quiver of the upper lip may indicate somewhat of a neurotic make-up. His slouchiness, listlessness, and weak voice the examiners believe indicate poor physical control.

The psychological examination showed an intelligence quotient of 96, therefore he was well within the group of the mentally normal.

In his personality traits we find some indications of his difficulties. Say the examiners, "Though we find facts enough to warrant our belief that he is neither a subject of any definite mental disease nor mentally defective according to psychometric tests, yet we are forced to think of him as a person who shows behavior tendencies or traits which mark him as a very unusual personality. He shows these behavior reactions in spite of much incentive to conduct himself otherwise; he shows them under good conditions of home life, quite apart from

any question of poor companionship, and there is not the slightest reason to believe that they are resultant from mental stress and worry. In other words, there is not enough in his life situations to account for his attitudes and conduct; a very large factor must undoubtedly be his own bio-psychological organism, his personality make-up." They continue. "Sam's heavy indulgence in unfortunate habits chiefly betokens his native lack of the usual amount of power to control his own physical impulses and temptations. The type of delinquencies that he engages in are, on the whole, rather childish and weak, and with regard to them he does not show manliness even in the boyish sense of the word.

"This is a picture that belongs to a well-known type, Sam shows chronic abnormal social and mental reactions to the ordinary conditions of life on the part of one who cannot be classified in any of the groups of the insanities, neuroses, or mental defectives. He belongs to the group of the constitutional inferiors, some authors would say that he shows signs of constitutional psychopathic inferiority."²²

Another illustration of the making of a criminal through the mechanism of constitutional psychopathy is furnished by the following case:

The H. C. Case.

H. C. was sent to the hospital through the Veterans' Bureau from Ohio because of threats against a young lady and her family. He was supposed to have followed the young lady from Washington, forcing his attentions upon her, and it was the opinion of the physician who ordered the patient here that he would carry out his threats if he escaped from the institution. When admitted here, he complied readily with the admission procedures, was courteous, conversed rationally, was very alert and stated that his being sent here was a joke, though in one way it was serious. He claimed that he and the girl he was to marry soon had been trying for months to get hospital treatment for him, but that the Veterans' Bureau sent him from place to place, until finally the girl's family demanded immediate treatment and he was sent to St. Elizabeth's. He knew the nature of the hospital, but was willing to come because he was sure the doctors would see that he was not crazy and would give him the proper treatment. He launched into an attack upon the Veterans' Bureau for its neglect of his case and waxed quite eloquent.

According to him, his trouble consisted of spells. His left ear would begin to itch, and he then would feel pressure along the mastoid ridge which radiated to his head, causing him unbearable pain and frequently a temperature of 104° or 105°. He admitted being irritable during these spells, but refused to admit that he had ever been crazy. He pointed to a small nodule, the size of a pinhead, under the skin behind his left ear as the cause of his trouble. He claimed to have noticed this shortly after being hit with a billy by a German soldier while

²² Judge Baker Case Studies, Series 1, Case 10.

fighting in the trenches on the Marne. He had also received a wound in his left knee, the bullet grazing the flesh, and it had left his knee stiff. He was discharged from the army in 1919 with 25 per cent disability on account of this stiffness of the knee. He then worked as an auditor for a shipping firm and in the adjutant general's office as clerk, and finally he was sent to school to study law by the Veterans' Bureau. His pains, however, forced him to give up his studies.

Later on he stated that a woman physician who was treating him had told him a hard-luck story about one of her patients who had been wronged by another man and had worked on his sympathies so that he married the girl in order to save her from disgrace, his idea being to divorce her later on. He claimed never to have lived with his wife. Later on he found out that she was colored, and he wished to have the marriage annulled, as the Maryland law does not recognize a marriage between white and black. All he would have to do would be to prove her color. This case had been worrying him and may have contributed to his nervousness.

A careful physical examination failed to reveal any pathology, and the nodule could not in any way have produced the symptoms described. It was quite evident that the patient was not truthful, that he wanted the Veterans' Bureau to get him out of certain difficulties and pay him compensation. Considerable time was spent by the hospital in investigating his many contradictory statements, which he was always able to rationalize in a very clever way, since he was naturally bright and had studied law.

It also appeared that he had met a girl, Miss S., after his marriage; that he had concealed his marriage from her and had represented to her that he was a lawyer, that his family was wealthy, and that he personally had considerable real-estate holdings. He had sent her flowers and expensive presents for which she had to pay later on. Only after she had become attached to him had she found out that he was already married and that his wealth and influential connections were imaginary. She had then decided to leave Washington and go to her home in Ohio, but he had followed her there. It was because he had told her of the spells caused by the swelling under his ear that she had tried to get him admitted to a hospital.

A reputable local attorney, Mr. X., gave the following information: The patient became known to him in the spring of 1922, when the California Fruit Company, a client of his, referred the case to him. H. C. had succeeded in cashing bogus checks in the name of the company. H. C. was at the time in jail. Upon learning that the patient was an ex-service man and because of his pleadings, Mr. X. concluded that H. C. was a victim of the war and had got himself involved through acting impulsively. Through Mr. X.'s influence with the district attorney, the case was nolle-prossed. Mr. X. believed that friendly confidence would help H. C. and therefore took him into his own law office, gave him a desk, and helped him in his spare time. He enrolled in a law class, purchased books, and

so forth. He was with Mr. X. for about one week, during which time he was not employed by Mr. X. or in any way connected with the firm, though he had cards printed in which he claimed to be associated with Judge X, and to handle ex-service men's claims. He did not, however, do any studying, and Mr. X. told him to get out. It was later learned that he married in 1921, that he met his wife on a trolley car, followed her home, and pressed his attentions. The wife was then about fifteen years of age. After that he lived with his wife's mother, who ran a boarding-house. He never contributed to the support of his wife, and his mother-in-law finally turned him out of the house.

Later on he became acquainted with Miss S. He negotiated the purchase of a high-powered car and gave a fraudulent check for \$1,000 as first payment. The car was recovered. While in Mr. X.'s office he eavesdropped upon a conversation with a client. Afterwards he intercepted this man, told him that he was charged too high a fee, and offered his own services, which were accepted. For this he received a considerable fee. He collected payments from a colored man who purchased a piano from Marshall Field's in Chicago. He had no authority for this, being unknown to the company. An affidavit certifying that the patient had completed two years in a law school proved to be a copy of a copy. He carried off a large quantity of Mr. X.'s letterheads on which he would write to Mr. X.'s clients, making false representations. His outstanding characteristic was great audacity. He would do the most shortsighted things in a brazen and defiant way. It was Mr. X.'s opinion that he never showed any psychotic symptoms. There were many charges against him in the penitentiary.

In giving his history, the patient did not mention any of his experiences with Mr. X. or the fact that he had ever falsified checks. When questioned specifically, he stated that Mr. X. was a crook, and that as soon as he found that out, he left him, that his difficulties with checks were due to his wife, who drew the money out of the bank without his knowledge. He never had to think long for an answer.

Although when admitted to the hospital he insisted upon an operation when he was ordered to the medical department and the surgeon was about to remove the lump, he suddenly changed his mind, saying that there was no use in removing it as some doctor had told him that it was not the cause of his nervousness.

From his brother the information was obtained that he did well at school and had had no trouble before he entered the service. The brother, however, mentioned a second enlistment in the army in 1920, during which he got married and secured his discharge on the plea of having to support his wife. The brother stated that he had always had a mania for money and liked to give the impression that he and his family were wealthy.

From the adjutant it was learned that H. C. enlisted in the army in 1916, that he sustained a gunshot wound of the left knee in July, 1918, that he was furloughed in the regular army reserve in May, 1919, and was honorably discharged in June, 1920, when that reserve was abolished, that the records did not

show that he had ever been hit on the head or received treatment for such an injury, although he stated that he had received first aid.

He failed to establish his claim and was discharged from the hospital with a diagnosis of constitutional psychopathy. Following his discharge, he got into touch with relatives of various patients, made false representations, claiming that the hospital kept non-insane patients locked up, and was evidently so plausible as to get some Congressman to make an inquiry on the floor of the House concerning the hospital. Several months later he pleaded guilty in the Federal district court of Boston to a charge of raising a United States Treasury check for \$3 77 to \$53.77. He was sentenced to a year and a day in Plymouth Jail.

This patient showed no intellectual impairment; he was above the average mentally; he was bright and a very smooth talker. Physically, he was a very good specimen and showed no anomalies. He was extremely egotistic, narcissistic, and exhibitional, and his maladjustment was principally at the social level.²³

Thus it appears that mental abnormality, whether operating through defect, inherited or acquired, through constitutional inferiority, about the cause of which so little is known, or through epilepsy, is a condition of the individual make-up favorable to criminality under bad social conditions. Individuals so constituted are not a serious menace to society, if they have thrown about them proper social conditions. The feeble-minded, the inferior, and the epileptic can be so handled that they do not become criminal. The trouble lies in the fact that society has not learned to adjust its arrangements to the peculiarities of these people. We cannot change their constitutions. If we take them young enough, we can teach some of them new habits. We can adjust their social circumstances so that such people will not be moved to crime. We can throw about them influences which will be helpful rather than harmful.

QUESTIONS AND EXERCISES

1. How many times as often is feeble-mindedness found among prisoners as in the general population?
2. What would you reply to the contention that the reason mental defect is found among the prisoners to so large a degree is that the brighter people are just as delinquent but are clever enough not to be caught?
3. Assuming that the feeble-minded have no special bent toward crime, being but children in mind, that instead of being specially quarrelsome, highly-sexed, and unusually cunning, they are simple beings, unusually good natured, suggestible, under-sexed, and can form good habits as easily as bad ones, how would you explain their criminality?

²³ Karpman, "The Psychopathic Individual: A Symposium," *Mental Hygiene*, January, 1924, pp. 183-186.

- 4 In what respect does epilepsy differ from feeble-mindedness in the making of the criminal?
- 5 Keeping in mind question 4 above, what other points in Fred Tronson's history is it necessary to know in order fully to explain his criminality?
- 6 Explain the discrepancy between the early and the later findings of the mental testers as to the relation between mental defect and criminality.
- 7 Discuss the statement that the feeble-minded person has a greater potentiality for criminality than the person of high intelligence.

CHAPTER VIII

MENTAL FACTORS: THE PSYCHOSES AND MENTAL CONFLICT

THE various forms of insanity often produce serious delinquencies. In a study of 608 consecutive admissions to Sing Sing by Glueck in 1916 and 1917 it was shown that 12 per cent were mentally diseased or deteriorated. Of these half were dementia *præcox* cases, over 20 per cent were suffering from syphilitic disease of the central nervous system, and another 20 per cent from alcoholic deterioration.¹

Goring reports that Dr. Heron estimated that in England 4.1 per cent of the criminal population as compared with 2.1 per cent of the general population have the insane diathesis. Goring's coefficient of correlation of insanity with the commission of crime suggests a high degree of correspondence.²

While the number of crimes due to the insanities is probably not exceedingly large, the seriousness of the crimes committed by insane persons makes this source of delinquency an important one. The following cases given by Dr. White illustrate one type of insanity which produces serious crime.

The Army Private Case.

A private in the United States Army, twenty-nine years old, did well during his first three months in the army and at the end of that time was promoted to corporal. Shortly after that a change was noticed in the man. He became negligent in his duties. As a consequence he was tried finally by a summary court-martial and fined \$20.00. He then applied for a transfer to another post, but the request was refused by his captain. A few days later, under the impression that a soldier had taken \$2.00 from him, he went to his room, got his revolver and five rounds of ammunition, loaded the gun, put it in his hip pocket, and started to hunt for this soldier. The day before there had been a shooting affair in a near-by town, which put the idea of shooting into his mind. While he was looking for this soldier he was told that the captain wished to see him. On his appearance before the captain the latter told him that he had been reported for overstaying a pass and furthermore that he had been seen tearing off his chevrons. The man denied both these charges and became very angry. The captain then dismissed

¹ *First Annual Report of the Psychiatric Clinic in Collaboration with Sing Sing Prison* (New York, 1917), p. 29.

² Goring, *The English Convict: A Statistical Study* (London, 1913), p. 226.

him, but the patient tarried and told the captain that he would like to resign as a non-commissioned officer. The captain agreed and again dismissed him with the words "That is all." The patient drew back a pace and replied, "No, it isn't all, captain," and thereupon, drawing his gun, he shot at the captain. He missed him, but the first sergeant and company corporal started toward the man and he shot again and wounded them both. In the meantime the captain had grappled with him and, in the struggle, was shot in the neck, from which wound he died ten days later. The criminal was placed in solitary confinement and was told when the captain died. He began to develop a defense reaction which expressed itself in the belief that the captain had only played dead and was having him held for murder in order to get even with him. This delusion persisted, in spite of the fact that from the window of the guard-house the criminal was able to see the funeral procession on its way to the cemetery. He insisted that this was a mock funeral. When tried by court-martial, evidence was presented that he had been peculiar for some time before the shooting. An alienist gave evidence that he was suffering from dementia *præcox* of the paranoid variety. It appeared at the trial that there was no reason for his killing the captain, who was a kindly, fatherly officer, well liked by his men. The criminal showed his insane tendencies by becoming incensed against his lawyer and accusing him of being in conspiracy against him.

He was sentenced to imprisonment for life and, after two years, during which time he continued to show delusional ideas, was sent to St. Elizabeth's hospital in Washington, D. C. Here he maintained that the captain was alive and displayed great emotion whenever the subject was mentioned. During the three years he was in St. Elizabeth's, there was no emphatic change in his mental condition. Subsequently, when being transferred to a State hospital near his home, after being pardoned from the penitentiary, he was taken out of the hands of the hospital attendants on a writ of *habeas corpus*, taken before the judge and ordered discharged because he had not been adjudicated insane in the particular county in which he happened to be at that particular moment.

Here is a man of the most dangerous character who is a criminal because he is suffering from a mental disease, turned out by a blunder of the law to pursue his uncontrolled way.³

Certain of the dementias result in other forms of crime than those of violence. Dr. White summarizes the case of a litigious paranoid who is known in law circles of Maryland as the King of Litigants.

The King of Litigants Case.

A sixty-four-year-old physician, after a trial for perjury, was found guilty and, while awaiting sentence by the court, was discovered to be insane, with the result that he was admitted to St. Elizabeth's hospital in 1907.

³ Adapted from White, *Insanity and the Criminal Law* (New York, 1923), pp. 107-112.

The trial was only the last of a long line of lawsuits in which he had been engaged throughout most of his life. For at least thirty-three years he had been suing people or corporations. During that time he had obtained 1,296 magistrate's judgments amounting in the aggregate to \$127,836, besides \$2,348 in costs. In 1877 he had obtained 619 judgments against the American Express Company amounting to about \$50,000, which were later set aside by a higher court. Later, however, he obtained other judgments against the same company amounting approximately to \$1,000,000. It was his custom to locate in a community, obtain the names of various people there and secure judgments against them in magistrates' courts for various sums by default. Frequently the defendants knew nothing about the matter until judgment had been rendered. Frequently he forged documents and obtained judgments in this way. It was one of these forgeries which finally brought him to grief.

Under examination at the hospital, he evidenced a very well-organized system of delusions. For example he said that he had caused the capture and execution of a Confederate spy during the Civil War and that since that time the friends of the man had been persecuting him. He told about his \$50,000 judgment with the American Express Company and it was discovered that this trouble started from an original disagreement over a charge of 40 cents on a prepaid package. In the hospital he was very suspicious, kept his door closed and would scarcely talk to the physician. After about a year in the hospital, he was permitted to visit his brother in Ohio but did not voluntarily return and had to be brought back. He got into touch immediately with lawyers who filed a petition for a writ of habeas corpus. This writ was denied, both by the lower court and by the Court of Appeals. After this he began to show signs of senile deterioration and to develop grand ideas of an absurd nature. During the last few years of his life his mental condition steadily deteriorated until he finally died in the hospital.⁴

Sometimes the insane are sexually delinquent. The following case described by Dr. White illustrates the close connection of delinquency with certain delusions about the character of the individual.

The Knight Errant Case.

This man was an Austrian, aged 34, when he was admitted to St. Elizabeth's hospital from a United States prison where he was serving a ten-year sentence for violation of the Mann Act. He had been convicted of transporting a young girl from Chicago to Iowa where he was trying to initiate her into a life of prostitution.

This man was seemingly very intelligent. He was well acquainted with four languages, appeared to be well educated, and had a fine appearance and quite a charming manner. He had traveled extensively and showed great willingness to talk about his life. He saw nothing wrong in the various misdeeds of his

⁴ White, *op. cit.*, pp. 124-126

life; all of them were the result, in his opinion, of a misunderstanding of his motives by low-minded people. He himself admitted that he was suffering from what he called "super-altruistic monomania." This led him to befriend the destitute and depressed, according to his story, even at great personal expense and inconvenience. His magnanimity induced jealousy on the part of some people, and even the police, in his opinion, were moved against him by certain base standards of their own.

The story of his life, which he wrote out by request, is a remarkable document, too long to be quoted here. However, it tells a story which shows his belief that he is the son of an Austrian count who had been the chamberlain to the Emperor of Austria. Through difficulty between the father and mother, as an infant he was given into the charge of an American citizen who lived in his birthplace. His real mother deposited enough money in the bank, he said, to give him a good education and to provide for extensive travel. Moreover, the lady in whose charge he had been placed was rich and gave him every advantage possible. At nineteen, when he was about ready to enter a university, he fell in love with a girl by the name of Lena Adele von Daubeck. They were to have been married, but the day before the wedding while he was riding with her in the park, her horse ran away and killed her. He took a pistol and shot himself, he relates, but the crowd which had gathered stopped him and then he says he does not know what happened. He only remembers that he was ill a long time and was told that his Lena was alive. Then he was placed in what he describes as a "nerve sanatorium," after discharge from which he and his foster mother traveled to France and England. After a great deal of traveling about Egypt and even as far as Ceylon, he came back to southern Europe, where he says he met another girl, by the name of Paula. He married her, renamed her Lena, traveled with her to the important cities of Europe, and then brought her to the United States. According to his story, they traveled through the most important cities, down as far as Galveston, Texas, and finally came back to New York. Here a family of artists whom he and his wife had met coming over on the steamer from Europe abducted his wife in the following manner, according to his written description:

"My wife went much to their apartments, and one evening, it was on November 10, 1905, when I went to fetch my wife from there they told me they would leave the next day for London where they had an engagement. They asked me if I would help to pack their trunks and I did so. At two in the morning the trunks were all packed and the lady invited me and my wife for a last tea. In the morning I woke up and felt so bad, the room was empty and the landlady told me they were all gone and my wife with them; I did not believe it and went home and all my trunks were gone and then I saw that also my money and my watch and all was gone and I hurried to the docks and came just in time to see the steamer leave the dock, on board my wife, my beloved Lena. I thought I would die, but I did not. I started to think, as it was evident to me that these

people had kidnapped my innocent Lena I had no money but I had to follow them some way. It was Saturday and I was helpless That night I slept on a bench in Union Square and then came Sunday and then Monday. And my wife was gone and I alone, left behind, and she in the hands of bad people. And I went to Battery Park and looked at the water that separated me from her. On Monday while walking on Broadway I saw near the Custom House a small agency where they wanted men to work their way to London I had but a few dollars and I was ashamed because I thought everybody knew it, it was the first time in my life that I was short. But I went to that agency and told them my story and wept and gave them all I had and they put me on board the steamer and I worked my way to London My first work in life, and hard hard work But I knew my Lena was in danger and I had to do it. When I reached London through the Express Company I found out that the artists with the big trunks had gone to a place near Leicester Square so I went there. It was a hotel for artists where they had stopped and when I reached the place I nearly fainted I knew my sufferings, my terrible grief were over. I knew I would find there my wife, my Lena. And so I went there and asked for them and the proprietor told me he knew them and also my wife and that they had left two days ago, on the 25th of November for Cape Town in South Africa" He followed them to Cape Town, according to his story, where he found his wife in a cheap burlesque show. He took her with him to various places and then his family finally forced him to divorce her

His own story shows that he then traveled through various parts of the world, always accompanied by some girl whom he sometimes describes as his wife but always as a person whom he has rescued from a convent or from destitute circumstances But each one of them he names Lena His whole purpose, according to his delusion, was to befriend these unfortunate girls.

During his stay in the hospital, he continued to assert that he belonged to the nobility and asserted that the Austrian legation at Washington would have him freed at once if they knew he was in the institution for the insane. Some members of the legation who came out to see him at once recognized him as a noted Austrian crook. His record was looked up and it was found that he was an extraordinary confidence man who made a practice of becoming acquainted with poor girls, inducing them to run away with him, and later selling them to houses of prostitution When confronted with this record, he denied being the person in question, saying that this was an effort on the part of the authorities to justify the unjust persecution which had landed him in prison.

The judgment at the hospital after long study was that he was a constitutional psychopath and was not suffering from any acute mental disorder. Accordingly he was returned to the penitentiary to finish his sentence ⁵

⁵ White, *Insanity and the Criminal Law* (New York, 1923), pp 127-135 Copyright by The Macmillan Company, New York, and quoted by special permission

THE PSYCHOSES

Another set of mental conditions which induce delinquency are the psychoses. These give rise to what Alexander has called the neurotic criminal.⁶ The feelings, as well as the ideation, affect attitudes and conduct. If the mind operates in a way which varies decidedly from the way in which normal minds operate, inevitably abnormal conduct will result. Among these aberrations are dementia *præcox*, paresis, melancholia, manic-depressive insanity, paranoia, and senile dementia. The psychiatrists have worked out these various aberrations in considerable detail, into which it is not necessary for us to go in the study of the causes of criminality. Dr. William Healy has most carefully shown the relationship of these aberrations to delinquency.

Dementia Præcox. Most students of delinquency recognize dementia *præcox* as an important form of mental disease in connection with crime. Dr. Glueck found it the most important form of mental disease among the admissions at Sing Sing. Dr. Hickson of the Municipal Court Psychopathic Laboratory in Chicago believes it has a very high correlation with delinquency. In 728 high-grade moron cases Dr. Hickson found 14.7 per cent affected with dementia *præcox*.

The name derives from the fact that the mental symptoms usually appear first during adolescence. The dementia *præcox* case shows strange tendencies in conduct which, together with the mental difficulty, are the signs of the disease. Some of the early signs of the disease are extreme shyness and fear. Frequently obsessed with fears, sufferers from this disease are hesitant about meeting strangers. They will refuse to seek a job, they have a fear of a prospective employer. They may even hide themselves from their own families. Often accompanying these signs are certain manifestations of excitement or very great dulness, and, among those likely to commit crime, certain symptoms of paranoia, such as delusions of persecution. Students of those afflicted with this disease have noticed the frequency with which bad sex habits are correlated with dementia *præcox*. Moreover, frequently the victims of this disease struggle with the idea of suicide.⁷

The Major Dobson-Captain Hill Case.

An illustration of the effect of dementia *præcox* on delinquency is to be found in the case of a man who said he was Major Dobson but who proved to be Captain James Hill. He was sent to the psychopathic hospital in Boston by

⁶ Alexander and Staub, *The Criminal, the Judge and the Public*, New York, 1931, p. 53

⁷ Healy, *The Individual Delinquent* (Boston, 1915), pp. 592-594. See also Bleuler, *Textbook of Psychiatry*, trans. by Brill (New York, 1924), pp. 372-445

Federal authorities, after his arrest on the charge of forging a check for \$1,000 under the name of "Maj Mark S Dobson." In the examination it appeared that he had a dual personality but could not explain the matter. He said that he used these two names because he had two fathers, one of whom was dead, viz. Mr Dobson, while the other father, Mr Hill, was still living. He labored under the delusion that he had the rank of major and that the check he tried to cash was his own pay check. He thought that Capt Hill had been discharged but that Maj Dobson was still in the service.

He had always lived in Florida, yet he said that part of him had been educated in Europe. Owing to this delusion, his conduct had been peculiar for some time before he came to the hospital. In France he wandered about for a month. He said that he knew what he was doing but could not control it. Moreover, he claimed that he had heard people say such things as "Kill him!" He was worried about himself and anxious for help in the situation.⁸

Paresis. One outcome of paresis is what is known as dementia paralytica. Paresis is one of the manifestations of syphilis of the brain. It produces profound emotional disturbance, resulting often in extreme passion and irritability, frequently over imaginary annoyances. Delinquencies are to be found in connection with it, and frequently hallucinations disturb the patient. Sometimes deterioration of the mentality accompanies the disease, but often during the history of the disease criminal violence is shown. In many cases, however, the delinquencies are in the nature of petty thieving, even by rich men, the public use of bad language, indecency, and extreme dissipation. Many times also the mental aberration shows itself in speculative ventures in business which frequently lead to using other people's money. The impulsions to which this disease gives rise are readily carried into effect, the suggestibility of the patient is heightened and thus the disease has a rather direct bearing upon anti-social conduct.

Occasionally the disease occurs in juveniles, although it is known as a disease of the prime of life. When it does appear in juveniles, it frequently produces serious delinquency. It is because of the possibility of its presence that careful examinations of delinquents are now made in our best institutions for the signs of paresis, for example, the complete loss of the knee reflex and the unequal size of the pupils of the eye.⁹

The Thomas Scannell Case.

An illustration of the psychosis due to syphilis is the case of Thomas Scannell, who was drafted at the age of twenty-one and sent overseas. After seven months' service in France, he was sent to the A E F. Hospital. He passed through three

⁸ Southard and Jarrett, *The Kingdom of Evils* (New York, 1922), Case 80, pp 310-311.

⁹ Southard and Jarrett, *op. cit.*, Case 44, p 215.

hospitals in this country, in which his trouble was diagnosed as due, variously, to dementia *præcox*, general paresis, and manic-depressive psychosis. He was excited and talkative, threatening to write to the President for a better room. In this excited state he sang, danced, and fought with others in the hospital. In the psychopathic hospital from which the record of this case comes, he was definitely shown to be a paretic.

His history showed that he was an illegitimate child of a hard-working and respectable woman, married to a good man who died when the boy was eight years old. As a young man he had been steady and possessed of a pleasant disposition. There was no evidence of the use of alcohol, and he had held one job for five years.

This case illustrates the danger to society of one afflicted with this malady when it develops a psychosis of this sort.¹⁰

Melancholia. The victim of melancholia suffers from great emotion, often accompanied by delusions and hallucinations. Frequently the disease leads to suicide as well as to delinquency. The usual form of crime committed by the sufferer from melancholia is the murder of near relatives, followed by suicide. Many times this action is preceded by setting fire to the house. Melancholia is very rarely seen before late adolescence.

Manic-depressive Insanity. Occasionally crimes of violence are committed by one suffering from this particular form of insanity. It is characterized by great exhilaration, sooner or later followed by abnormal depression. Since this disease is usually discovered quite easily and the victims institutionalized, it does not appear frequently in the courts. The conduct to which it usually gives rise is characterized by quarreling, unprovoked assault, misrepresentation, fighting, and running away. Sometimes, however, it leads the victim to steal or obtain money under false pretenses. It frequently leads also to sex delinquency.

The Winifred Reed Case.

An illustration of manic-depressive psychosis resulting in delinquency is furnished by the case of Winifred Reed. She was admitted to the psychopathic hospital in Boston at the age of 24. She showed mental depression, and her history gave evidence of wanderings for two days and a night in the late autumn, in the hope that from the starvation and exposure she might die. Again, in the middle of winter, she wandered off in the snow, freezing her feet, again with the hope that she might die.

Her family history shows an alcoholic father from the time that Winifred was about ten years old. She was mentally bright and did not show any mental symptoms of record until she lost her job through charging a fellow employee with stealing another's hat. After that she was unable to keep a job, talked

¹⁰ Southard and Jarrett, *op. cit.*, pp. 215, 216.

about being "sporty," and was thought by some of her employers to be "man crazy." Her father, believing she was going crazy, kept her frequently in the back part of his shop. Just before entering the hospital she had become careless and indifferent.

Her own history shows that she developed an excess of erotic passion about the age of twenty-one, when she first had an unfortunate sex experience. In this same year she also had a period of depression which lasted about three months. These depressions have occurred every year since that time, with increased frequency and increased duration.

While there was some question as to whether she should be classified as a *dementia præcox* or a manic-depressive, the hospital decided on the latter. Her subsequent history, which showed sexual delinquency again after about seventeen months of care by the social service department of the hospital, gave evidence of her manic-depressive condition. In such cases the period of mania tends to reappear with corresponding social delinquency.¹¹

Senile Dementia. Occasionally dementia causes delinquency in old age. While people beyond sixty years of age show a markedly diminished tendency toward anti-social conduct, occasionally old men become offenders because of a deterioration of their mental faculties which sometimes manifests itself in mental aberrations. Usually these delinquencies are sex delinquencies. Aschaffenburg says that, while grand larceny is only one one-hundred-fiftieth as great after seventy as it is between eighteen and twenty-one, convictions for indecency and rape are about one fourth as numerous after that age. Many of the old-age delinquents are first offenders; some of them have been men of good reputation and of superior abilities. Frequently these old offenders have as the object of their offenses children.¹²

Paranoia. By paranoia is meant "a chronic, systematized, delusional insanity." These delusions are self-centered and revolve about ideas of personal persecution and personal grandeur. Usually the disease occurs without any evidences of other mental deterioration and works out in delinquency by reason of the fact that the person feels that he is injured in some way by some one. Many of the assassins of presidents, kings, and prime ministers have been paranoiacs. Frequently, however, paranoia manifests itself in a kind of chronic litigation. Many prisoners who have not been any too stable mentally when incarcerated will develop this grudge against society with delusions of persecution. Usually the disease is connected with a background of hereditary mental abnormality. Certain cases cited earlier in this chapter are good examples of paranoia. Dr. Healy thus summarizes a case showing both the criminal and the litigious tendencies:

¹¹ Southard and Jarrett, *op. cit.*, Case 81, pp. 314-317.

¹² Aschaffenburg, *Crime and Its Repression* (Boston, 1913), p. 154.

The Paranoiac German Case.

"A strong, healthy-looking German, who emigrated to this country some fifteen years ago, has been appearing in court either as defendant or complainant a large number of times. By his attitude, as he sits with his chest thrown out, and his voluble self-assertion one sees at once the egocentric personality. He informs us of his abilities and, notwithstanding these, his failures in business and tells us at great length of assaults made upon his person and insults offered and attempts to destroy his character. All these have emanated from his family. These relatives have a grudge against him and sneer at him and call him bad names and incite or even hire others to insult him and offer him bodily violence. This has been going on for years, with gradual involvement of various members of the family. At times he has perceived, he tells us, impending danger to himself and has assaulted others and been arrested for it. On one occasion he did not dare to do anything when his wife called him dirty names and pounded him with a stick, because his step-son sat in the next room with a shotgun. They have broken him up in business five or six times, and his store has been robbed dozens of times at their instigation.

"This man talks well and makes clear statements. He does not always stick to his points, but then he has a tremendous number of them to make; he sometimes counts them off as he proceeds in conversation. He is sure that his wife is unfaithful, that he has been unfairly treated by all, and he discusses in detail the injustices done him by those who through the courts have had to do with his family affairs. He has brought numerous complaints into the courts and instigated several lawsuits. He has followed up old records, he says, and done detective work to verify the points which he suspected. He has written very numerous letters, some of them extending over fourteen pages, to various officials and presents affidavits of the truth of his allegations. He continually threatens his present wife, as he did his two previous ones. A characteristic action was shown by his buying a shotgun and shooting it off early in the morning to let others know that he possessed arms. The neighbors by taking sides with the family have become implicated in his delusions of persecution.

"This man has been under observation by court authorities for years and has not shown notable deterioration. His delusions still center about his family, from which he is now parted. He does well at times in a business way, being able to make a good presentation of himself and his wares. The difficulties and dangerous possibilities of such a case are to be readily perceived and need not be enlarged on here."¹³

There are minor aberrations, such as certain transitory mental conditions, which are frequently connected with some of those already discussed and which last only for a short time. However, frequently while they last they

¹³ Healy, *The Individual Delinquent* (Boston, 1915), pp. 605-606. (Copyright by Little, Brown and Co., 1915. Reprinted by permission.)

are the cause of delinquencies which the person himself cannot understand after the transitory condition has passed.

A very interesting set of mental aberrations is to be found in adolescence. These apparently are connected with the unstable condition generally to be found in that period but are sometimes connected with an unstable heredity and mental troubles growing out of the lack of adjustment to the new world into which the young person is growing. Frequently these aberrant mental conditions are connected rather closely with bad sex habits during the adolescent period.¹⁴

MENTAL CONFLICT

Often children who are normal mentally experience great psychic disturbance because of some experience which shocks them. The trouble usually arises by reason of knowledge of things which have been looked upon as forbidden subjects, or of something in the child's history, real or imagined, which upsets the mental and emotional balance. Often the experience is hearing vulgar talk about sex or seeing pictures, or being taught bad sex habits. Says Healy, "Since nothing, by the innermost nature of animate beings, so stirs emotion as the affairs of sex life, taking this term in its broadest sense, it is to be pre-supposed that we should find most cases of mental conflict to be about hidden sex thoughts or imageries, and inner or environmental sex experiences."¹⁵

The importance of this set of factors in producing delinquency is indicated by the fact that in 823 juvenile offenders Healy found that mental conflict was a main factor in fifty-eight cases, and a minor factor in fifteen others.¹⁶ The methods of psychoanalysis are used to unearth these causes of delinquency and to correct the difficulty.

The following cases illustrate how mental conflict operates:

The William Rybart Case.

William Rybart, aged fifteen years and two months at the time he first came under the observation of Dr Healy of the Judge Baker Foundation at Boston, was born of American parents in California. His delinquencies ranged from lying and stealing money and numerous articles to joining others in stealing an automobile and then blackmailing his mother to obtain means of running it. The mother and father both come of good sound stock. William's grandfather on his father's side was a drinking man, but all of his immediate family became

¹⁴ See cases cited by Healy, *op. cit.*, pp. 627-637, 653-677.

¹⁵ Healy, *The Individual Delinquent* (Boston, 1915), p. 353

¹⁶ *Op. cit.*, p. 130

good business men and have become prosperous. None of them were alcoholic or showed any signs of mental or nervous disease. On the mother's side we find that, when William became a problem, she had become a nervous wreck. She had married William's father when she was thirty-seven years old. Both her mother and father came of fine healthy people with no evidence of insanity or nervous disorder in the family. Of the eight children in her family, five have graduated from college.

In William's developmental history there are no signs of any difficulty until he was about six and a half or seven years old. At about that time his father became ill and his mother could not watch him very closely. Consequently on several occasions she had to send him away to stay with relatives in a suburb. It was after the first long stay there that his mother detected him in a lie for the first time. That spring also he showed signs of being nervous, fidgety, and restless, and he developed night terrors and began biting his nails. It was at this time, as far as his mother knows, that he first stole.

The psychological examination indicates that he was even supernormal in general ability. When examined there was no evidence of anything wrong with him physically. As observed in the Foundation, his personality traits were good. He appeared to be frank and boyish but rather manly, thoughtful, and affectionate.

When the boy was interviewed and his confidence secured, he told a story that illuminated his delinquency at once. During this first stay with relatives, at about six and a half or seven years of age, he met some boys who introduced him to a certain knowledge about sex affairs. He remembers that it was following this introduction to matters that had been a closed book to him that he began to steal. Moreover this shock was supplemented by another, when at about ten, on a farm to which he had gone for the summer, an elderly man drew pictures for him and the boys with whom he associated, and told them vulgar stories about the pictures. These experiences set up in his mind a train of ideas and induced unrest and temptations with which his training had not prepared him to cope. Moreover, some things were learned from a certain George with whom he had been going in the last few years. William says George is "an awful liar and he is immoral with girls." It was with George that he had been engaged in stealing automobiles.

This association confirmed him in habits which the mental conflict seemed to have set up. The exploration of the difficulty by the clinic with the help of the boy and the formation of new ties of association was all that was necessary to start the development in an entirely normal way.

Say Drs. Healy and Bronner, who studied the case: "In presenting this case we have in mind the class of cases of which it seems fairly typical, a class comprised of individuals with good mental equipment, sometimes coming from what is considered a good home life, who have gone on and on into delinquency because their fundamental situation, often one of inner mental stress, has never been understood and met."¹⁷ Eight years of increasing failure, during which time no

¹⁷ *Judge Baker Case Studies, Series 1, Case 16.*

careful exploration of the cause was made, were followed by rapid and thorough recovery.

The Edward Somes Case.

Another case, also illustrating the factor of mental conflict in producing delinquency but joined with certain associations and the misconduct of the mother, is supplied by the case of Edward Somes, aged fifteen years, two months. Born in England of English parents, he spent his infancy in the United States. For three years he had been engaged in stealing. The stealing was sometimes from neighbors but more often from relatives. Once also he ran away. The father and mother were both delinquents, both possessed weak characters, neither of them showing stability or a sense of responsibility.

The developmental history of Edward shows no abnormality. There is no evidence that he was neglected or poorly treated in any way. At eight years of age he began living with relatives.

There is likewise no evidence that in his social adjustment he was troubled by his home treatment, or by any difficulties with his young companions. While at first Edward had seemed keenly anxious to see his mother and appeared to enjoy her visits, after two or three years the family noticed an entire change. After seeing her he was frequently irritable and morose.

When he was interviewed at the Judge Baker Foundation, he showed signs of being deeply disturbed and unhappy. During the exploration of his difficulty, he said that he does not plan his stealing beforehand but does it on impulse. He never heard of any stealing going on in school, or any talk about it. He has never read stories about stealing. While he has heard some vulgarity among the boys, he says these things have never worried him. In this case, as contrasted with that of William Rybart, the delinquency does not seem to be sex-linked. As a result of the examination by the psychologist, it was discovered that Edward's difficulty was linked up with his thoughts about his mother. He confessed that he knew that she sometimes stole. After this confession he became more confidential and further acknowledged that when he heard about his mother's stealing it "got on his mind." Then, shortly after hearing that she stole, he was spending a week-end with her and went to the store where she worked. Unbeknown to her, he saw his mother discharged by the manager of the establishment, because she had been caught stealing. He thinks about this frequently, and it worries him. He says that all these things happened before he ever took anything. On questioning, he admitted that he feels very unhappy about it and sometimes feels so discouraged that he just doesn't care. He says nothing makes him unhappy except his mother, and it does make him unhappy to think of her.

In this case, we have a clear instance of an emotional disturbance due to the acquisition of knowledge concerning the conduct of his mother which resulted in his delinquency. Say Drs. Healy and Bronner: "This case well represents the fact, of which we could give many examples from our experi-

ence, that few matters are more disturbing to some young individuals than the acquirement of knowledge which undermines their respect for their parents.”¹⁸

THE BLOCKING OF WISHES

In the conflict of personal wishes with the social circumstances of the developing child often lies the explanation of anti-social conduct. Thomas has pointed out the four fundamental wishes which motivate human action. These fundamental drives are: (1) the desire for new experience; (2) the desire for security; (3) the desire for response; and (4) the desire for recognition. All of these may be dominant in any given case, or two or more may work together in producing a type of conduct.¹⁹

The Abigail Hardell Case.

A good illustration of this is to be found in the case of Abigail Hardell, aged sixteen years and six months. Born of parents of old New England stock, she had been known for over four years by the staff of the Boston People's Institute, an educational and recreational institution for young people. She had made a place for herself in the life of that institution and gradually had been given some responsibility in the purchasing of supplies and in handling money. Until recently she had been considered very faithful. However, while engaged there, she took a sum of money amounting to about \$200.00 which she spent for clothing and other things for herself. This money was the Christmas Savings Club money of the institute, made up from the savings of young people against their Christmas needs. In the sequel it came out that she had been guilty before this of purloining various articles, chiefly for personal adornment.

When the Judge Baker Foundation began to study the case they found a very interesting background in the home environment of this girl. The mother, forty-seven years old, was born in northern Vermont, went to a village grammar school, and was then at home until she was married at nineteen. Soon after she was confirmed there showed a peculiar religious zeal which seems to have had very little relation to some of her outstanding social characteristics. Because of her nightly attendance on week-night prayer-meetings and her husband's drinking, the home was one of dissension. She remained in the home, however, until Abigail, the youngest child, was four years old, then she left her husband and her four children and went to work in a factory about thirty miles away, where she remained until about a year later, when she went to work in Boston. The relatives on both sides, who lived near-by, cared for the children. After about five years Abigail's mother decided that it was time for her to take charge of the other two girls, Esther at the age of thirteen having come to her mother. The

¹⁸ Judge Baker Case Studies, Series 1, Case 20

¹⁹ Thomas, *The Unadjusted Girl* (Boston, 1927), pp. 4 ff

mother suddenly appeared in the village where they lived and took them with her to Boston. The maternal grandmother accompanied them and did the housekeeping

Abigail's mother appears to be a neatly dressed, sparsely built woman with rather hard features. She prides herself upon her strength and continuous work record. Both her children and others who know her have reported her as fanatically religious and believing all pleasure a sin. She is found to be very difficult to live with and a great nagger and scold, has a ferocious temper; has beaten her grown-up daughters with a broom-handle, is saving to the point of parsimony; and demands all of her children's earnings. Her mind seems to be set upon money and she displays a very harsh attitude toward her children, looking upon them as economic assets. To those who know her best, she seems to be a mixture of traits hard to understand.

Of Mrs. Hardell's children, the only other delinquent was Esther, aged twenty-three years.

In the developmental history of Abigail, it is interesting to notice that the child was born seemingly normal and that there is nothing in her history to show anything unusual in her physical development.

The situation in the home was anything but pleasant. When the mother moved to Boston and took her children with her, although she was working hard, her income was small. The children had almost no spending money and very poor clothing. All usually wore made-over things, obtained from various people in the Institute. Even in the Boston home there was much dissension between the mother and the daughters and the grandmother. The mother herself showed a very unsympathetic attitude toward the girls. Her discipline of them has been most severe and she expects absolute obedience, even if it involves misrepresentation—for instance, the beating she gave Abigail at fifteen for saying that her father was living when the mother had tried to maintain the fiction that he was dead. The mother saw to it that the children were regular in church attendance and Sunday school.

While the home was such as not to stimulate any healthful interests, Abigail's attendance at the Institute provided her rather wholesome recreation. She read much, particularly stories. She seemed to enjoy her life at the Institute and often lived there for weeks for the work that she did in the late afternoon and evening. In general she had few girl friends, although lately she has become a great admirer of an older girl and has given her presents. So far as the influence of companions toward delinquency is concerned, the evidence is entirely negative. During the last year, however, Abigail has shown a great fondness for pretty clothes.

Her school history was uneventful up to the last year. She showed herself to be only a fair student, although recently her marks had been very good. During the past summer she had worked in a high-grade specialty shop at a seashore resort where her desire for feminine finery was further stimulated.

Physically Abigail appears to be a wholesome, normal girl, although she shows certain childish characteristics.

Her psychological examination shows her to have an intelligence quotient of 95. Her motor control is fairly good and her mental control in general normal. While she is not an unusually bright girl, the tests show that she is quite normal, although a deliberate worker rather than keen and quick in mental tasks. There is no evidence whatever of mental imbalance. In her personality traits she was pleasant, direct, and forceful, as suggested by her good physical make-up. It was noted that she was growing sulky and reticent and was rather quarrelsome in the groups at the Institute. There she had told great stories about rich relatives and especially of a rich uncle who sometimes drove down to Boston. She also claimed that she was engaged to a young Vermonter who was wealthy and an officer in the army. About the time she stole the money, she came home with a bouquet of violets and orchids, and said that it had been given to her at a party where she was the guest of honor. At another time in the schoolroom she burst into tears and gave a graphic description of the death of her father at Ypres, where he had been fighting, according to her story, with the Canadian forces.

In the girl's own story to the people at the Foundation, she told about hearing of stealing at the Institute two years previously, but ~~she~~ ^{she} did not affect her in any way. She said that a girl employed in the same stor ~~on the~~ ^{ashore} often remarked about how unfair it was that wealthy people could ~~have~~ ^{enjoy} fil laces, jewelry, and women's apparel, while poor girls like themselves ~~had~~ ^{enjoy} these things. This put some ideas of social injustice into her head. ~~She~~ ^{She} confessed sometimes seemed to her to be true. She thinks these ideas may ~~have~~ ^{have} been in her mind the day she took things. She claims that she had not been planning the theft at the Institute until the worker who had charge of the money put it away in Abigail's presence, saying that the next day she would deposit it in the bank. When Abigail was leaving to go home, she went into the room to get her wraps and it flashed into her mind to take the money. She did so, hurried out of the building and became rather frightened and thought of getting rid of it. She hid it at home and the next day came into town after school and bought expensive clothes and a handsome pin, which she had initialed with the monogram of the older girl whom she admired. She says that she was happy in the Boston high school to which she had gone until this year, because she was with girls whom she had known in the grammar school. During the year she was transferred to another high school, and there the girls did not make up with her. She said, when questioned, that a good while ago in Boston she first heard about sex matters and at first was greatly shocked. She said she never talked about these matters with any adult and, after she got over the first shock, this knowledge had no influence upon her. She is not particularly interested in boys and evidently, from what she says, has not been disturbed by questions of sex. She describes her home as a most unpleasant place and says that the thing that worries

her most is that she is not able to dress as she would like. She says that there has never been any mental stress or trouble of any kind, except after she had stolen. She does express her unhappiness at not being able to make the girls in school appreciate her or take any interest in her. Abigail clearly was striving for recognition, for response, and for new experience.²⁰

This survey of the part played by the mental characteristics which provide the psychical basis of delinquency shows us a picture of the individual who varies in his mental make-up so much that he is unable to mold the environment to his service. He lacks that balance and self-control necessary to a complex social life. The ordinary agencies of social control which enable a weak or warped mind to solve the difficulties of modern life often are lacking. In other cases there is a mental bent which does not easily conform to social requirements. The individual seems predetermined to evil. When the social machinery is not delicately adjusted to these aberrant mental natures, or when the social environment is such as to excite to evil, tragedy is almost certain.

Furthermore, these studies suggest that these mental characteristics play their greatest rôle in the making of the criminal in childhood and youth when the character is being formed. Even in normal children this is the period when there is the greatest stress in the process of adjustment to life-conditions. Frequently even the child of "normal intelligence and good heredity finds it difficult under evil surroundings to form habits in accord with established social standards. How much more difficult is it for the child who comes into the world with mental defect or a warped nature to adjust himself to a social world which requires the use of intelligence and a balanced personality, especially when he is subjected to an environment with anti-social standards! Even the best endowed are influenced more or less by the social influences about them. Combine mental defect and mental aberration with evil influences, and the result is quite certain to be an anti-social attitude.

QUESTIONS AND EXERCISES

1. In what respect do some of the insanities differ from mental defect as a factor in the making of the criminal?
2. Can the crimes committed by the insane, as in the Army Private Case, be prevented as easily as those by the feeble-minded, e.g., the Fred Tronson crime? Explain.

²⁰ *Judge Baker Case Studies*, Series 1, Case 12. Thomas has worked out the theory of blocked wishes most thoroughly in his *The Unadjusted Girl* (Boston, 1923).

3. Can teachers and others having charge of children be of service in preventing the development of the mental conflicts producing delinquency? Suggest methods
4. Suggest ways in which Edward Somes could have been prevented from becoming delinquent.
5. Outline a program of prevention for such a case as Abigail Hardell
6. Of these various types of mental and emotional disturbance which one seems to be numerically the most important?
7. Explain how social and economic conditions may affect the development of some of these disturbances.

CHAPTER IX

HEREDITARY FACTORS

IS CRIME INHERITED?

MANY of the cases presented in the previous chapters have suggested the question as to the influence of heredity on the production of criminals. Among people who have not given any particular attention to the problem of heredity it is often assumed that criminality in the ancestry is an explanation of delinquency in the progeny. This fallacy has been shared by some more serious students. For example, Lombroso devotes a chapter to the influence of heredity in the causation of crime. In discussing the statistics of hereditary influence he cites a study made by himself of 104 criminals among whom seventy-one showed some hereditary influence. He not only cites the criminality of parents but shows how other anti-social factors were present in the ancestry. He cites Dugdale's study of *The Jukes* as "the most striking proof of the heredity of crime and of its relation to prostitution and mental diseases."

Crime as such cannot be inherited. Crime is a social phenomenon produced by a combination of the bodily and mental characteristics of the individual and the environment acting upon that responding personality. Now, a part of that personality is the result of biological characteristics inherited from the ancestors. Crime is not a unit biological characteristic. However, the natural characteristics which function in producing crime may be inherited. As a result of these characteristics which incline the individual to anti-social acts, the individual under the proper circumstances may become a delinquent. Therefore, while it is impossible to say that crime can be inherited, it is of the greatest value to study carefully the biological characteristics which are most closely connected with criminality in order to understand the genesis of the criminal.¹

It has long been known that certain physical characteristics such as color of eyes, color and texture of hair, stature, arm-span, and certain physical

¹ Lombroso, *Crime, Its Causes and Remedies* (Boston, 1912), pp 151-166, Ferr escapes this crudeness of statement. See his *Criminal Sociology* (Boston, 1917), pp 94-98. See Lange, *Crime as Destiny* (New York, 1930), for a study of twins who were criminals, Willemse, *Constitution-Types in Delinquency* (New York, 1932).

abnormalities are inheritable. Now the students of heredity have found evidence that certain mental and emotional characteristics also are inherited. On this point Karl Pearson in his Huxley Lecture for 1903 said, "We inherit our parents' tempers, our parents' conscientiousness, shyness, and ability as we inherit their stature, forearm and span" If this is so, it is not so difficult to understand why criminality often seems to run in families. If there are biological characteristics which produce quarrelsomeness, ungovernable temper, violence, trickery, dishonesty, and lack of self-control, then they may be inherited. However, it is not certain that Pearson made out his case. The work of Watson and other behaviorists has thrown doubt upon it. These similarities of temper in families may be due to early conditioning of the child similar to that to which the ancestors were exposed.²

INHERITABLE CHARACTERISTICS CONDUCIVE TO CRIME

The personal characteristics cited in the foregoing chapters, which frequently conduce to criminality, often seem to be derived from ancestors. Among these are physical and mental inferiority, including physical defects, feeble-mindedness, insanity, epilepsy, constitutional inferiority, and certain physical and mental characteristics which may or may not be in the nature of defects, such as superabundance of physical or mental energy, early sexual maturity, physical overdevelopment, and nervous instability.

PHYSICAL AND MENTAL INFERIORITY

In a previous chapter we have seen that physical defects sometimes contribute to delinquency. These physical defects, illustrated by some of the cases cited, are often inherited. Tuberculosis furnishes an illustration that will be helpful in this connection. Tuberculosis cannot be inherited as a disease, but a predisposition to the disease can be inherited and therefore heredity in this respect plays an important part.³

We have already seen the connection of feeble-mindedness, insanity, and epilepsy with delinquency. There is general agreement among biologists that feeble-mindedness is inheritable. It is also certain that the nervous organization upon which nervous diseases develop may be inherited, as well as the

² Quoted in Thomson, *Heredity* (London, 1912), p. 529. The original lecture may be found in *Journal of the Anthropological Institute*, XXXII, 179-237. On the theory of early conditioning see Watson, "Practical and Theoretic Problems in Instinct and Habits," in Jennings, Watson, Meyer, and Thomas, *Suggestions of Modern Science Concerning Education*. See also Jennings, *The Biological Basis of Human Nature* (New York, 1930), Chap. VII.

³ Guyer, *Being Well-born* (Indianapolis, 1916), pp. 148-153.

tendencies to certain nervous instabilities. Many cases of epilepsy have been studied which can be traced back for one or more generations. The constitutional inferior almost always has a history of bad ancestry.

ILLUSTRATIVE CASES

The results of numerous studies of degenerate families throw light upon the hereditary influence of defect upon anti-social conduct.

The Juke Family.

The Juke family has long been infamous in this country. Dugdale in 1877 made public the results of his study of this group of degenerates. The family goes back to a man called Max, who was born somewhere between 1720 and 1740. He was descended from early Dutch settlers in New York State. He settled in a rough country about five lakes in central New York. He was a frontiersman who made his living by hunting and fishing, working hard at times but idling often, and on the whole was not fond of hard or steady work. He was a hard drinker, a jolly fellow, fond of companionship, but of no particular force. He was the father of a large family, some of the children being illegitimate. Two of his sons married into what has been called the Juke family of girls. There were six sisters in this family, some of whom, if not all, were illegitimate. One of these six sisters was Ada Juke, who has become known as "Margaret, the mother of criminals." She had one illegitimate son who became the progenitor of the criminal line of this family. Dugdale traced carefully the history of 709 descendants of the Juke blood, and knew of enough others to bring the total number of progeny up to 1,200 within the seventy-five years of their history which he traced. This family furnished to the state of New York 280 adult paupers, 140 criminals and offenders, 60 habitual thieves, 300 infants prematurely born, 7 murderers, 50 common prostitutes, 440 persons contaminated by sexual disease, and 30 who were prosecuted for bastardy, who during that seventy-five years cost the people of the state \$1,308,000, "without reckoning the cash paid for whiskey, or taking into account the entailment of pauperism and crime of the survivors in succeeding generations, and the incurable disease, idiocy and insanity growing out of this debauchery, and reaching further than we can calculate."⁴ Fortunately, a few years ago Dugdale's original manuscript, containing the real names of the people he investigated and on which his study of the Jukes was based, was discovered. Dr A. H. Estabrook traced out the descendants of the Jukes down to 1915. The whole family of Jukes totaling 2,094 persons, of whom 1,258 were then living, shows to that date 170 paupers, 129 who had received outdoor relief, 118 criminals, 378 prostitutes, 86 brothel-keepers, and 181 who were intemperate.⁵

The Kallikak Family. Even more interesting from the standpoint of heredity is the study of the so-called Kallikak family, published by Goddard.

⁴ Dugdale, *The Jukes* (New York, 1910), pp 14, 15, 69, 70.

⁵ Estabrook, *The Jukes in 1915* (New York, 1916).

This study grew out of an attempt to trace the history of a girl who was admitted to the New Jersey Training School for the Feeble-Minded at Vineland, New Jersey. The investigation revealed the following interesting facts.

During the Revolutionary War a young man, who in the record is called Martin Kallikak, Sr., was a member of a company of soldiers stationed at a small village, where he met a feeble-minded girl and by her had an illegitimate son, known in this story as Martin Kallikak, Jr. From him this girl was descended in the sixth generation. After the close of the War, Martin Sr. returned to his home and married a Quaker girl of good family and by her had a family, 496 of the descendants of which have been traced. In this legitimate line all but one were of normal mentality. Only two were known to be alcoholic, one was a victim of religious mania, only 15 children died in infancy, there were no criminals or epileptics, and among them there has been found nothing but good citizenship. Among them are doctors, lawyers, educators, judges, merchants, landholders, and men and women prominent in all phases of social life. In the feeble-minded line are 480 descendants who have been traced. Of these 143 were feeble-minded, while only 46 have been found to be normal. Thirty-six have been illegitimate. There were 33 sexually immoral persons, mostly prostitutes, 24 confirmed alcoholics; 3 epileptics; 82 who died in infancy, 3 criminals; 8 keepers of brothels.⁶

Professor Poellman, of Bonn, traced a family, which he called the Zeros, descended from a drunken woman. In six generations numbering 800 individuals he found 102 beggars, 107 illegitimate children, 54 almshouse paupers, 181 prostitutes, 76 delinquents convicted of serious crime, and 7 murderers, who had cost the people a total of \$1,206,000.⁷

Many other studies of like nature have been made in recent years, such as *The Tribe of Ishmael*, by McCulloch, *The Smoky Pilgrims*, by Blackmar, the *Hill Folk* and *The Nam Family*, under the direction of Davenport, and *The Pineys*, by Miss Kite. All of them show clearly the hereditary entailment of physical and mental defect, which result in social inefficiency in most cases, while in many cases under the appropriate social conditions the defective person develops delinquency.

OTHER PHYSICAL AND MENTAL CHARACTERISTICS

One of the cases we have cited shows the inheritance of the superabundance of physical and mental energy which leads to delinquency. In the case

⁶ Goddard, *The Kallikak Family* (New York, 1912), pp. 18-30.

⁷ Davenport, "Hereditary Crime," *American Journal of Sociology*, XIII, 402 (November, 1907).

history of offenders many illustrations of the inheritance of crimogenic characteristics are to be found.⁸

The Inheritance of Early Sexual Maturity. Early sexual maturity plays an important part in producing delinquency, especially in girls. We have already discussed the influence of early maturity upon delinquency and have here to add only that when there is evidence of the inheritance of this characteristic by children whose parent was also delinquent, the operation of heredity is suggested.

Healy cites the case of a sixteen-year-old girl of splendid physical development, who at that age had twice been a mother. A study of the heredity showed that she got the characteristics which entered into her delinquency from the mother. The mother's father was a saloon keeper, the mother herself was so delinquent when she was young that she had to leave the small town in which she lived. She married an alcoholic good-for-nothing by whom she had fifteen children, six of whom were living. The father failed to support his family, with the result that his wife had to work out to help make a living. In spite of the fact that the mother at the time of this study was forty-five years of age, had worked hard all her life, and had borne this large number of children, she was still strong and inclined to sexual looseness. The daughter showed all the characteristics of her mother and was what she was largely because of the characteristics she had inherited from her mother.⁹

Nervous Irritability. Nervous irritability often appears in both the delinquent and his ancestry. This irritable temper frequently leads to deeds of violence and in other ways gets the individual into trouble. Frequently it leads to rupture in the family and desertion of the home by the child.

PROPORTION OF CRIMINALITY DUE TO HEREDITARY FACTORS

Not enough careful studies have yet been made of family histories to enable us to do more than to give some approximate weight to the inheritance of characteristics which make for delinquency. Monkenmöller, in a study of 200 children in the home for neglected children in Lichtenberg, of whom 134 had been guilty of some offense, found that in 85 cases either the father or the mother or both were drunkards; in 24 cases they were insane; in 26

⁸ Dugdale pointed out that in the Jukes family both crime and honesty run "in the lines of greatest vitality" *Op. cit.*, pp. 53, 54

⁹ Healy *The Individual Delinquent* (Boston, 1915), pp. 192, 193. For a case of a boy inheriting early sexual maturity and therefore overdeveloped sexually for his age, see Healy, *op. cit.*, pp. 193-196

epileptic, and in as many more cases they were afflicted with some other severe nervous disease.¹⁰

Hartman found among 199 criminals hereditary defects in 69.8 per cent. Koller found in a study of 1,850 insane persons, 72.2 per cent with a history of defect in the ancestry, while among 370 healthy persons he found 59 per cent with inherited predispositions. Thus it appears that criminals are nearer to the insane than to normal persons with respect to direct heredity and the frequency of hereditary defects. Hartman found criminality in the ancestry in 32.7 per cent of the criminals he examined, while Sichart found in Wurttemberg that 43.7 per cent of 1,714 criminals had criminal parents. Yet, as we have seen, it is not a question of the inheritance of crime, but of physical and mental characteristics which tend to produce delinquency.¹¹ Healy, in his study of 1,000 juvenile delinquents in Chicago, of whom 668 provided adequate family histories, found that in 271 of the cases there was good evidence that no criminality was to be found in the family records. In 245 other cases epilepsy or some grade of mental defect was present in the family. The remaining 152 cases were neither mentally defective nor epileptic but did show criminal individuals in the direct family. In 823 cases Healy found that heredity appeared as a minor factor no less than 502 times, or in 61 per cent distinct defects in the family ancestry were noted. Perhaps even more vivid is his enumeration of the defects he found in the heredity of 61 per cent. Including the parents and the grandparents he found 82 cases of insanity, 1 case of suicide, and 79 cases of criminality. Counting only the father and the mother, he found 39 cases of epilepsy, 10 cases of migraine, 19 of feeble-mindedness, 60 of subnormality, a certain proportion of which he says were probably feeble-minded, 57 psychopathic cases, in which there was marked instability, 10 plainly marked neuropathic cases, 20 clear cases of constitutional inferiority, 112 cases in which there was gross immorality known on the part of the father or mother, including many cases of maternal prostitution, 61 of desertion, 18 of extremely bad temper, 6 of addiction to drugs, 16 of extreme cruelty, and 8 of extreme laziness.¹²

It is impossible to say definitely how large a proportion of our criminals are such by reason of the inheritance of physical or mental characteristics which incline them toward crime. As we have seen, of the delinquents in institutions a somewhat larger percentage than of the general population is either mentally deficient or mentally disturbed. As to the amount of the abnormality which is due to inheritance, we have data on feeble-mindedness

¹⁰ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp. 128, 129.

¹¹ *Ibid.*, p. 126

¹² Healy, *The Individual Delinquent* (Boston, 1915), pp. 153-157 Lang, *Crime and Destiny* (New York, 1930).

alone. About half of the feeble-minded have inherited their defect. The other half of the cases are due to accidents, diseases, and other factors which arrest their mental development. Whatever be the exact proportion of the hereditary inclination to criminality, inheritance of mental and physical characteristics which under certain social conditions affect the moral conduct of people plays a considerable part in the problem. Moreover, without knowing how important is the hereditary factor, since we do know that it operates in a certain proportion of the cases, we can safely assert that the inheritance of certain physical and mental characteristics is a factor in the making of the criminal.

ILLUSTRATIVE CASES

Space does not permit us to provide cases illustrative of each of the points just cited. The cases which follow are sufficient to indicate how some of these characteristics are carried through heredity from parent to child, sometimes resulting in the same kind of delinquency for the child as is to be found in the parent.

"The Autocrat."

The case of "the autocrat" illustrates how certain characteristics, handed down from parent to child, and acted upon by social conditions, result in delinquency. The autocrat at the age of seven was the leader of a band of young toughs who terrorized his neighborhood. For much of the time of three years he lived in the streets, engaged in fights, gambled, and picked pockets. He had a violent temper and, when enraged, hurled the thing nearest at hand at the one who had provoked his wrath. At ten his petty thefts became serious thievery for which he was finally taken to the juvenile court by neighbors. He was always in fights, determined to have his own way at all costs, and bullied younger and weaker children. In school he was a great truant and very impertinent to his teachers. He was three years behind his grade. At home his parents could not control him. He used bad language and beat the younger children.

When studied by the authorities it was found that his height and weight were normal, that he was well-nourished, and that his health was quite normal. Physically he had good development. He had a proud bearing and was a perfect specimen of boyhood and very handsome.

His mental examination by a psychiatrist showed an intelligence two years above normal. However, he was shown to be neurotic, and his family history revealed a poor hereditary basis for character. While he had good mental ability, he had no control.

His personality traits were cleverness, keen intellect, and good general ability, on the one hand, and irritability, cruelty, obstinacy, viciousness, vanity, audacity,

and an overbearing attitude on the other. When we study his father and mother we can see the hereditary background of this anti-social boy.

His father was without education or training for any occupation or trade. He was shiftless, quarrelsome, and neurotic. For nearly twenty years he had made no attempt to provide for his family and for about that length of time had been supported by the local benevolent organizations. He had no idea of moral right, showed a vile and disagreeable temper when thwarted, often using obscene language in the presence of his children. He was irreligious, would not listen to counsel or advice, and had practically no friends. His brutality and cruelty to his wife and children were notorious in the neighborhood. Consequently, he was despised and hated by the neighbors. A social worker who had called him, he threw bodily out of the house. Complaining of poor health, he was examined and found to be in good health. He was a great liar and fabricator of preposterous stories.

The mother of this boy was a weak, sickly woman with a tubercular history. The tendency to tuberculosis seems to have been in the family for at least a generation, as is indicated by the death of two brothers recently from that disease. Twice she herself was confined in a sanatorium for the tubercular.

She showed little interest in her children and is described as a moral weakling, completely dominated by her husband. Physically she must have been an attractive-looking woman, although now she is faded and worn. In spite of his brutality, she has always been faithful and devoted to her husband.

The other children in the autocrat's family show very much the same personality characteristics, with certain variations. The oldest brother, for example, while he has no definite record of juvenile misdeeds, ran away before he was sixteen. After repeated wanderings, he finally completely disappeared. The second brother was very much like the oldest one. He also developed a tendency to run away but fortunately joined the Navy very young. He had a juvenile court record. A third brother was mentally defective and died at the State institution for the feeble-minded. A younger sister is hysterical, tubercular, and as selfish as the autocrat. She was in the same institution as the autocrat and was a very difficult pupil. The youngest brother was also taken into the institution at the age of eight. He was tubercular but mentally normal. A younger sister was also put into the institution at a very early age. She is described as normal physically and mentally. The youngest sister, a baby, is apparently normal.

This boy's early history shows that when hardly more than an infant he displayed the ungovernable temper of his father. His quarrelsome, irritability, obstinacy, selfishness, and brutality constituted the chief problems for the institution in which he was placed, after running away from the reformatory to which he was first sent.¹³

This case, used to illustrate the heredity of certain characteristics which inclined the children to misconduct, must not be made to mean that heredity

¹³ Adapted from Drucker and Hexter, *Children At Bay* (Boston, 1923), pp. 219-224.

is the only factor in these tangled lives. Like almost every other case, whether cited to show the influence of one factor or another, it illustrates the play of other influences on these wayward children. All delinquents are made by the interplay of various factors. This case shows the same physical and mental characteristics in parent and children and therefore appears here. Others might be cited in which certain characteristics, handed down from parents to children, appear throughout a number of generations. In fact many of the cases cited to show the way in which other factors operate in concrete cases show the same thing as this.¹⁴

INHERITABLE MENTAL ABNORMALITY AND CRIMINALITY

Since, as we have seen, conduct is the outcome of the interplay of the mind—including the affective and the volitional nature, to use some old terms, as well as the purely intellectual—with the environing circumstances, does not what we know about inheritance suggest that there are a number of things society should do to meet this problem?

The debate between those who believe heredity determines conduct and those who believe surroundings are the important factor has gone on now for nearly three quarters of a century. Now one side and then the other has seemed to have the best of the argument. Each side has cited cases and gathered statistics to prove its point. The advocates of the dominant influence of surroundings are like those who have advertised among the Negroes a preparation which would take the kink out of the Negro's hair. The hereditist has pointed with triumph to the fact that after a short time has elapsed the hair is as kinky as ever. On the other hand the environmentalists, like the marcellists, can point out that straight hair can be given a "permanent wave." Out of the long debate have emerged more clearly than before a number of facts: (1) There are individuals who are born with such a bent as makes social control difficult, (2) there are others who can be molded by the influences by which they are surrounded; (3) in between these two classes, those impossible to modify and those easily molded, lie a larger class than either, some of whom can be changed only to a slight degree and with great difficulty, others of whom can be wrought upon more easily and effectively. Thus, both sides are right, but not exclusively right. The truth lies in a discriminating acceptance of what each side can clearly prove by scientific method. The results of the argument indicate the measures society may take to meet the problem.

¹⁴ See Jennings, *The Biological Basis of Human Nature* (New York, 1930), pp 245, 246

HOW TO PREVENT DELINQUENCY DUE TO HEREDITY

Eugenics has been proposed as the only method by which the stocks inimical to socialized conduct may be eliminated. In some of our States sterilization laws have been passed. However, in the present state of the law and of public opinion, such laws when applied to criminals have been declared unconstitutional as cruel and unusual punishments. Doubtless, however, a program of positive and negative eugenics would help in the solution of the problem. Such a program would do much to instruct the people among whom these potential criminals live so that the public would treat them for what they are and not put burdens upon them which they cannot bear. So far as the inheritance of feeble-mindedness affects the problem of crime, Goddard has suggested certain considerations we should bear in mind. If, in the present state of public opinion, it is impossible to sterilize all who should not reproduce, and if on account of the cost it is impossible to segregate in institutions all the feeble-minded, nevertheless there are some things we can do to diminish criminality on the part of the feeble-minded.

Social Measures. We can take such social measures as will make it less probable that the feeble-minded will develop into criminals. As Goddard has said, speaking of the feeble-minded: "Some intelligence is possessed by all, unless possibly the very lowest. It is a question of degree and of the need that the individual has of intelligence, in other words, of his environment. If an individual cannot adapt himself to his environment, can we not adapt the environment to him?"¹⁵ We can segregate in institutions and colonies certain of the feeble-minded who cannot live at large. By adjusting our educational methods we can give the feeble-minded children an education which they are fitted to receive and which will prepare them for as useful life as their poor abilities make possible. In so doing we shall prevent the present reactions against school on the part of the feeble-minded who fail to learn, we can inspire hope and the development of their best efforts, and we can reduce the temptation to commit crime because of need.

Furthermore, if we can bring the public to recognize the nature of the feeble-minded and to see in them, no matter how old they are, only children, then we shall be able to get the public to take the attitude toward them which it takes toward children. They will not be given jobs which they cannot be expected to fill. We shall not place upon them responsibilities in economic or social life which they are unable to carry. We shall then throw about them the safeguards which we place about children. The public attitude,

¹⁵ Goddard, *op. cit.*, pp. 586-587.

instead of taunting them into criminality, will guard them and protect them from the temptations they are unable to withstand.

The other forms of mental abnormality transmitted from parent to child may also be handled by sterilization or segregation, or by social treatment they may be prevented from developing criminal conduct. With the development of mental hygiene among the population, earlier attention to the incipient signs of mental disturbance should enable society to take steps to prevent criminal outbreaks.

Furthermore, the education of the public as to the nature of mental defects and mental diseases will do much to solve the problem of the inheritance of these socially undesirable conditions. Until we come to the place where we shall not permit the procreation of feeble-minded and otherwise mentally incapable individuals, we shall have the problem of crime due to the inheritance of characteristics unfitted to our present-day civilization. When the public comes to understand the facts of heredity and the social consequences of physical and mental defect and abnormality, it will then be possible to put into operation a program for the elimination of certain hereditary defects, a program, however, as Jennings remarks, of somewhat limited usefulness.

We must not forget, however, that the hereditary influences work themselves out in a social environment. While we attempt to study the various factors which make the criminal, we must remember that crime is the product of a number of complex influences. Says Guyer,

"Beyond doubt a considerable portion of crime and degeneracy is due in large measure to innate inclination, but with just as little doubt much is the effect mainly of vicious habits acquired through an unwholesome environment. A normal appetite or impulse may be given a pathological trend by bad influences. And one has to reckon, moreover, with degrees of hereditary aptitude to crime. Just what is the measure of normality? To what extent, by developing to their highest point certain inhibitive or opposing tendencies, can we counteract certain inherent proclivities for wrong-doing? By what means shall we sift the congenital defectives from the victims of suppressed opportunities? These and kindred questions confront us at the very outset of our studies of crime and delinquency. It is obvious that although we may institute the strictest elimination of the socially unfit, unless we can provide a wholesome environment for the fit, lapses into unfitness are sure to recur."¹⁶

¹⁶ Guyer, *Being Well-born* (Indianapolis, 1916), pp 263-264. On the difficulties of the negative eugenic program see Jennings, *op cit*, Chap X.

QUESTIONS AND EXERCISES

- 1 Why cannot crime be inherited?
- 2 What further facts would you have to know about the Juke family to make it "the most striking proof of the heredity of crime"?
- 3 In what respect is the Kallikak family a better illustration of the influence of the hereditary factor in criminality?
- 4 Dugdale in discussing the Jukes said that crime appeared in those branches of the family which married into a more vigorous strain. What bearing does that fact have upon the hereditability of crime?
- 5 How would you answer the argument that the "Autocrat" family shows the influence not of heredity but of social environment?
- 6 Which is the more immediately promising, the program of the eugenist or that of the social engineer?
- 7 Outline a program for the prevention of the crime due to the inheritance of characteristics which make for criminality.

CHAPTER X

ECONOMIC FACTORS¹

WHAT bearing have economic conditions upon criminality? From a review of the discussion in criminological literature it appears that students of the question frequently have answered it according to their views of the present economic organization of society. In Europe this has led to a curious quarrel as to the importance of the economic factors in criminality. Goring, who studied 3,000 criminals in Parkhurst Prison in England, came to the conclusion that, while persons convicted of arson, wilful damage to property, and sexual offenses are selected disproportionately from agricultural laborers, seamen, and miners; while soldiers and sailors are more prone than persons in other occupations to commit crimes of personal violence and rape; and while the commercial and artisan classes commit less of these crimes but commit more of the acquisitive offenses, *it is not occupation itself which is an influence upon crime, but that the occupation provides varying opportunities for committing different kinds of crimes.*² His conclusion was that the relative economic prosperity of the family in which the convict was brought up has no relation to the frequency of his convictions.³

METHODS USED TO DETERMINE THE RELATION OF ECONOMIC CONDITIONS TO CRIME

Early in the study of the relation of economic conditions to criminality more or less haphazard methods were used to determine the relationship. In the latter half of the last century various European criminologists began to attack the problem with greater exactitude.

Six different methods have been used in recent times in the endeavor to measure the relationship between economic factors and criminality. These are (1) comparison of seasonal fluctuations with crime rates, usually measured by convictions; (2) study of the trade cycle in connection with convictions; (3) study of economic crimes; (4) research on the economic status

¹ The substance of this chapter was published in the *Journal of Social Forces*, September, 1924, and January, 1925

² Goring, *The English Convict. A Statistical Study* (London, 1913), p 289

³ *Ibid.*, p 281.

of committed persons; (5) investigation of the occupational distribution of criminals; (6) study of professional criminality.

It is clear that (3) and (6) are special studies in the general field of the relationship between economic conditions and crime. The others are an attempt to correlate changes in economic conditions with the crime rate.

1. **Seasonal Fluctuations.** Since the days of Lacassagne a number of criminologists have constructed what they call crime calendars. In these calendars they set down the number of crimes committed during each month of the year. Lacassagne, with such a calendar based upon the seasonal distribution of crimes against property in France between 1827 and 1870, reduced to the basis of an equal duration of 31 days each month, found that the months with the highest numbers of convictions committed between 1827 and 1870 were December, January, November, February, October, and March. The numbers of convictions in the remaining months were lower.

Similar studies were made in other countries, demonstrating that crimes against property increased from the hot months to the colder months. Studies might be cited to prove the dependence of criminality upon the seasons. The fundamental underlying factors were the economic conditions. The lessening of employment in the cold months, the greater pressure of economic need, and the higher cost of living all played a part in explaining these phenomena. More food, clothing, shelter, and heat are needed in the cold months than in the hot.

2. **The Trade Cycle and Criminality.** Much more important than the research done on seasonal fluctuations of economic conditions are the studies which have been made of the relation of the trade cycle to the commission of crimes. Poletti, the Italian criminologist, endeavored to measure commercial activity in connection with criminality. He tried to show that crime increases with the lessening of commercial activity.

Efforts have been made to ascertain *whether there is a correlation between the rate of criminality and the price of some of the staples of life.* This has been done on the theory that if crime increases with the price of the staples, economic conditions have caused this increase. La Fargue, for example, took the annual number of failures as a measure of comparative economic conditions in a number of years. He also traced the curve for the price of flour. With these he correlated crimes against property, with the result that he showed a close correspondence. Many other students of the question have made similar studies. Bonger has reviewed very carefully the literature of the economic causes of crime made by students of the question in different countries of the world. In almost every case a parallelism between need as measured by the increased prices of commodities or by

industrial depression and crimes against property has been easy to show. With the industrialization of a country the correlation between grain prices and crime showed less parallelism. Later studies tend to substitute a composite index based upon a number of economic factors. Thus Ogburn and Thomas correlated a composite series of economic events with convictions in the courts of New York. Their series included wholesale prices, commercial failures, the production of soft coal, the production of pig-iron, railroad freight ton mileage, bank clearings outside of New York, employment in Massachusetts, railroad construction, and imports.⁴ Thomas used a similar composite index in her study of British criminal statistics in relation to the business cycle.⁵ The latter study showed a negative coefficient of correlation of -0.44 between property crimes with violence between 1857 and 1913 and her composite index measuring changes in the business cycle. For property crimes without violence the coefficient was -0.25 . Total indictable crimes in this study also gave a figure of -0.25 . In the former study only total offenses and offenses against the person were used. Total offenses showed a coefficient of -0.35 . In both studies total offenses were made up largely of property offenses. Both indicate that as business conditions improve crimes against property decrease.

Ogburn has shown that the total volume of crime is greater during business depressions. He worked out the coefficient of correlation between suicide and business depression in 100 cities in the United States from 1900 to 1920 and found it to be -0.74 . He and Miss Thomas found that convictions for all crimes in New York, 1870-1920, had a correlation coefficient of -0.35 with the business cycle and that crimes against the person showed a coefficient of -0.12 ± 0.09 .⁶

These investigations have been much more carefully made than the earlier ones endeavoring to correlate the prices of basic commodities or prices and wages with the crime rate. Some of the later investigators (e.g., Ogburn and Thomas) have discriminated between property crimes and crimes against persons. This discrimination is necessary, since it appears that there is a higher degree of association between property crimes and economic depressions than between economic depressions and crimes against the person.

Other figures which have not been thoroughly tested seem to indicate that there is a rather close association between prosperity and drunkenness

⁴ Ogburn and Thomas, "The Influence of the Business Cycle on Certain Social Conditions," *Journal of the American Statistical Society*, September, 1922

⁵ Thomas, *Social Aspects of the Business Cycle* (New York, 1925)

⁶ Ogburn, "The Fluctuations of Business as Social Forces," *Journal of Social Forces*, January, 1923, p. 76

and crimes of violence. Tarde's contention in this connection is that the large percentage of criminals in cities is not due to the commercial development of the cities so much as to the madness of luxury there to be found and to the unjust distribution of wealth and the inefficient direction of productive activity. He also argues that the economic factors which affect the problem of crime are transformations in the economic state of society. He cites crises and other sudden disturbances such as follow new inventions as instances of such transformations. These conditions make it impossible for the working class to satisfy their needs, and the unequal distribution of wealth, which in such crises becomes apparent, excites the cupidity of both the rich and the poor. Garofalo agrees with his view of the matter.⁷

3. **Economic Crimes.** In connection with the business cycle consider the relation of unemployment to crime. Theoretically it has been generally agreed that steady work makes for morals. Tarde has said that "Work is in itself the enemy of crime!"⁸ Bonger has argued that alcoholism is one of the potent crimogenic forces, and that unemployment often leads to alcoholism.⁹ A writer on unemployment in the United States just after the World War in a work giving the results of the President's Unemployment Conference says that the effect of unemployment on the worker is that if he is weak he falls into despair, while "If his personality be strong, on the other hand, he seeks mental compensation for his wounded pride, and the incessant rebuffs of job-hunting. He finds it in refusing to accept society's code of conduct. He becomes a rebel."¹⁰

When, however, we seek for statistical studies, based either upon large numbers or upon case studies, of the direct or indirect relation of unemployment to crime, we find that very little has been done. The hypothesis is that unemployment leads to demoralization. It may be true; it is what we should expect. What are the evidences for the supposition?

Certain facts concerning the occupation of inmates in penal institutions suggest that some of them got into trouble because they had no job. For example, the census figures on male prisoners and juvenile delinquents numbering 445,368 committed to institutions in 1910 show that 15.8 per cent had no occupation or did not report. This percentage is larger than any other except the occupation of "Laborers (not otherwise specified)," which was 33.6 per cent. That juveniles do not play much part in the large percentage of prisoners who have no occupation is indicated by the fact that of

⁷ Tarde, *Penal Philosophy*, Boston, 1912, pp 389-390, Garofalo, *Criminality*, Boston, 1914, pp 150, 156, 157

⁸ Tarde, *op cit*, p 383

⁹ Bonger, *Criminality and Economic Conditions* (Boston, 1916), p 419

¹⁰ Rice, *Business and Unemployment* (New York, 1922), p 108.

the 48,566 females and juveniles committed in 1910 over half reported an occupation prior to commitment. While lack of an occupation seems to be hazardous for adult male, employment for females and juveniles produces an undue number of delinquents.¹¹

Even clearer light is thrown on the problem by a study of over 500 inmates of the Wisconsin State Prison by the prison physician. While 84.1 per cent of 592 prisoners and 82.5 per cent of 120 recidivists worked before the age of fifteen, 50.5 per cent of the former and 61.7 per cent of the latter were without a trade.¹²

In England the situation is somewhat different. Hobhouse and Brockway report that of the prisoners in England in 1913 only 5.3 per cent had no occupation, while 60.6 per cent were laborers, a term which indicates all unskilled and semi-skilled laborers.¹³

In 1915 a study of the relation of criminality to unemployment was made in twenty large cities. It was found that burglaries increased during 1914, a time of high unemployment, 30 per cent over the number in 1912, vagrancy 51 per cent, robberies 64 per cent, and mendicancy 105 per cent. Divorce and suicide rates likewise increased. Social workers during that crisis cited many cases of men who had failed to get help or work and who left the office saying that they were going to commit some crime which would get them sentenced to prison where they could get enough to eat. The secretary of a temporary lodging-house at Little Rock, Arkansas, said that "Hundreds offered to work for their board rather than tramp or beg, while a few becoming desperate asked to be locked up and when refused stated frankly their intention to violate the law that they might be imprisoned."¹⁴

The National Commission on Law Observance and Enforcement (Wickersham Commission) had a study made on the relation between employment and crime in Massachusetts. This study found a rather consistent relationship between unfavorable economic conditions and the more frequent occurrence of certain types of crime in Massachusetts. Unemployment appeared to be a rather important causative factor in vagrancy and crimes against property. Its influence upon other offenses was comparatively slight. Similarly a very brief study of the connection between employment and crime in New York State made by Miss Van Kleek, indicates a similar relationship

¹¹ *Prisoners and Juvenile Delinquents in the United States, 1910*, Bureau of the Census (Washington, 1918), pp 150-153

¹² Sleyster, "The Physical Bases of Crime as Observed by a Prison Physician," in *Physical Bases of Crime* (Easton, Pa., 1914), p 125. Papers and Discussions Contributed to the XXXVIIth Annual Meeting of the American Academy of Medicine, Minneapolis, June 14, 1913

¹³ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p 7

¹⁴ *American Labor Legislation Review*, November, 1915, p 491

there. Miss Van Kleek concludes: "The close concurrence between increases in crime, particularly against property, and depression in business or employment shown both in Massachusetts and in New York, measured also against the business conditions in the whole country, . . . is the more remarkable when we realize that the annals of business are even less complete than the records of volume of crime."¹⁵

Mr. Whiting Williams in 1920 undertook to learn by first-hand experience the feelings of the common laborer who has no capital but his job. His findings are worth studying in connection with this problem of demoralization from unemployment. They are too long to receive more than brief mention. He says, "It is impossible to lay too much emphasis on the way in which men come into what we think are strange ideas and strange feelings, as the result of the lack of a job, the irregularity of a job, the unsteadiness of a job, the insecurity of a job." He points out that we are wrong if we think that the job is simply a matter of bread and butter. The biggest factor in the work, he thinks, is that employment offers them the chief basis for their self-respect and that unemployment destroys this self-respect. He believes that unsteadiness of the job does more than anything else to substantiate the unavoidable and inevitable conflict between the employer and the employee. He cites the result of the loss of a job by a foreigner. This man said to him, "Eight year I work in plant in New York after coming to this country. Whatever he want I do. I work all the time and all the time happy. But one day the boss come down mad, and he say, 'You fired'—and for eight year I been Bolshevik."¹⁶

A recent study made for the National Commission on Law Observance and Enforcement, based upon a sample of 300 admissions to Sing Sing during the twelve months ending February 28, 1930, shows the following facts:

1. Either in the last position held or in previous positions practically every main branch of economic activity was represented
2. More than one third of the group were employed in the process of a trade or business, while about one sixth were laborers, porters, and cleaners in various industries. Next in numbers came those engaged in delivery and trucking, chauffeurs, and drivers' helpers. It is apparent, therefore, that in this group these men were not predominantly unskilled but rather were almost a cross-section of the general population in the area from which the inmates of Sing Sing come.

¹⁵ National Commission on Law Observance and Enforcement, *Report on the Causes of Crime*, I, 259-320

¹⁶ Williams, "The Job and Utopia," *The American Labor Legislation Review*, March, 1921, pp. 13-23

3. Of these men 52 per cent were out of work at the time of the commission of the crime.

4. Unemployment is a circumstance present in a majority of the cases of men committed to Sing Sing. It is clear that in these cases a larger proportion of the men admitted had been out of work than the percentage of unemployed wage-earners as a whole.

5. Of those who committed robbery, 50 per cent were unemployed at the time of the crime, and 45 per cent of those who committed property crimes, while only 25 per cent of those who committed other than property crimes were unemployed.¹⁷

Another method of studying the relationship between economic conditions and crime is by comparing the fluctuations in the commitment rates for crimes against property with rates for other types of criminality. This procedure is based upon the theory that crimes against property are due chiefly to the desire for gain and therefore are economic crimes. It can be shown without great difficulty that this assumption is not always true. There are a number of these so-called economic crimes which are due in part to factors other than the economic one. The desire for social prestige may be the dominating motive in a crime against property. For example, the embezzler may not be in want, but he may desire to get rich quickly or to have a standard of living which is much beyond his ability to pay for with his present income in order to obtain social prestige.

A number of European students of crime have attempted to make crime studies of this kind. Fornasari di Verce¹⁸ undertook such a study in Italy, in Great Britain, and in New South Wales. The conclusion of his study was that economic pressure and economic changes tend to increase crimes against property out of all proportion to crimes against the person. Without question, any changes which affect the relationship between wages and prices to the disadvantage of the wage-earner will result in an increase in illegal efforts to obtain the necessities of livelihood. About all of value which comes out of this sort of study is to show (1) that the largest proportion of all crimes are those against property and (2) that in times of economic disturbance the laboring classes always suffer and therefore crimes against property increase.

4. Economic Status of Persons Committed. Another method which has been used in attacking the problem of the economic factors in criminality is that of examining the economic condition of those convicted of crime and comparing the proportions convicted from that class with their pro-

¹⁷ National Commission on Law Observance and Enforcement, *Report on the Causes of Crime*, Vol I, Part II (Washington, 1931), pp 193-218

¹⁸ *La criminalità e le vicende economiche d'Italia* (Turin, 1894), p 138.

portions in the general population. The European criminologists have been diligent in the use of this method. Fornasari di Verce made such a study in Italy. The substance of the findings was that while about 60 per cent of the total population belong to the poorer classes in Italy, some 85 to 90 per cent of convicted persons come from those classes. It is quite easy to show from any sample of prisoners to be found in any institution that the most of them come from the poorer classes. The difficulty with this method has been to get a comparable economic classification of the total population with which to compare the sample of criminals.

If it were shown that the poorer classes contribute more than their proportionate share to those committed to institutions, one would have to remember that this might be accounted for by their inability to hire lawyers to defend them and, for the petty offenders, by inability to pay fines. There is a possibility that the lower economic classes contribute more than their proportionate share to the criminality of any given country. In order to make sure that this is true, however, it is necessary to have very much more careful studies than have been made up to the present.

5. Occupational Distribution of Criminals. Still another way of attacking the problem of the economic factors in criminality is to study the occupational distribution of criminals. Again, these criminals are those who have been committed to institutions. Here, again, European writers have been prominent in this method of attacking the problem. Bonger studied the occupation of criminals in Italy from 1891 to 1895. The upshot of his study was that criminality was more prevalent in commercial occupations than in agriculture, manufacture, and the trades, was still lower among domestic workers, and very low among those in the liberal professions. However, Aschaffenburg's study of the occupation of criminals in Germany, 1890-94, showed that in that country the agricultural laborers had a high rate, but the agricultural employers a low one. Likewise, that the industrial employees had a high rate, and the employers a much lower rate. Similarly, when he divided the commercial group, the independent commercial workers seemed to furnish more criminality than the commercial employees.¹⁹

Here again, before one could draw any conclusion in regard to the relationship between occupation and criminality, even assuming that no other factors but the economic play upon the individual, he would have to know the relative numbers in each occupation, both in the sample of criminals and in the general population. Even if that were learned, he would not be able to say that the economic factors were predominant in causing the criminality.

¹⁹ Bonger, *Criminality and Economic Conditions* (Boston, 1916), p. 446; Aschaffenburg, *Crime and Its Repression* (Boston, 1913), p. 66

6. Professional Criminality. Certainly it may be argued that if one cannot make certain that the economic factors play an important part in criminality by these methods, it is possible to say that the predominant motive in professional criminality is economic gain. The bank-robber, the burglar, the forger, the counterfeiter, the confidence man, the business racketeer, the kidnaper, and all such criminals who live by their wits are as much moved by economic considerations as the ordinary business man in the pursuit of a legal occupation.

No statistical study of professional criminals has been made to determine their relative numbers in the total prison population. If such studies had been made they would give us perhaps a skewed picture of the actual professional criminal population. It is conceivable that they may be of a higher type mentally than the rest of the prison population. On this, however, we have no definite information. We do know that counterfeitors, forgers, embezzlers, and perpetrators of fraud are very much higher in their mental rating than sexual offenders, than most of the criminals by violence, and than the petty offenders. From some of the case histories available it is clear that some of these prisoners who have made their living by criminal activity of one kind or another are not unusually bright. Consequently, until we obtain better information we shall have to say that probably the more clever ones with the higher I Q.'s are represented by very small numbers in the prison populations. Possibly even if we knew well the professional criminal in the institutions we might not have an adequate picture of his type in general.

Without question the economic motive operates with great power in the case of this class of criminals. Nevertheless they are probably moved by the same social motives as people who make money in some other way. Often the only reason they want money is what money will bring them in the way of luxuries, ease, and the sense of monetary superiority. They differ from the ordinary business man perhaps more in the way in which they spend the money than in any other feature. Usually the money comes easily and it goes easily. Gambling, profligate living, and a superior status among the criminal classes are the main characteristics of their way of living on their ill-gotten gains. They are the aristocrats of the underworld, just as the intellectual and the successful industrialist or business man is the aristocrat in another class of society.

THE INFLUENCE OF ECONOMIC ORGANIZATION UPON CRIME

There are those who believe that the way in which the economic organization is set up has a good deal of influence upon criminality. The Marxian

contention that the present capitalistic organization of society makes for an increase of crime is voiced by Bonger. To him and his school the capitalistic organization of society, as he calls it, is the mother of all crime. By "the capitalistic organization of society" he means an economic organization on the basis of individual ownership and individual profit. Bad social conditions such as crowded housing, indecent living conditions, improper care of children, lack of education, denial of opportunity for the higher culture, emphasis upon selfishness instead of upon consideration of social welfare—all are due to our present society. He charges also that, in addition to these indirect results of the economic system, the conduct of industry for individual profit is responsible for the financial crises, the individual displacements, and the inequitable distribution of wealth which seem to have such a positive effect upon crime. He believes that if the productive instruments of wealth were owned by the state and the profits were removed from modern industry, crime would largely disappear. Then men would receive the just products of their labor, and they would work for the welfare of the whole group. The profit motive would not dominate industry, poverty with its crushing, degrading influence would not exist, and much crime would disappear. Moreover, he believes that the physical and mental incapacity which now accounts for a considerable proportion of crime would cease to exist because these things are produced by bad environmental conditions. The Bolshevik criminology in Russia is based upon this theory.

A number of other criminologists, while agreeing that economic conditions and the present economic organization are responsible for some of our crime, have seriously criticized the assumption that a change from individual ownership to national ownership of the instruments of production would cause any great decrease in crime. For example, Garofalo argues that crime in general is not due to proletarian conditions. He cites figures to prove that the number of criminals from the poor is not much greater in proportion to their number in the total population than the criminals from the better economic classes. This conclusion he arrived at on the assumption that many of the crimes committed by the poor class are petty agrarian thefts and that the higher number of criminals from among the poor is due to the fact that they cannot afford the money necessary to defeat the ends of justice which the rich, accused of crime, can afford.²⁰ Tarde likewise combats the socialist indictment of the present organization by an endeavor to show that the criminality of the proletarian classes is not much greater than that of the higher economic classes and that where it is higher the difference

²⁰ Garofalo, *Criminology* (Boston, 1914), pp. 156, 157

is not due to the present economic organization of society but to the endeavor to acquire wealth.²¹

The Marxians assume that the fundamental factor in the economic process which gives value to goods is labor. In this assumption they do violence to sound economic theory, based upon a valid analysis of the factors of production, the discussion of which we must leave to the economists. Moreover, they forget that, if population continues to increase while common necessities to keep people alive do not multiply accordingly, under any system greater poverty is bound to be the lot of an increasing proportion of the people. This fact cannot be ignored in any discussion of the relation of the economic organization of society to criminality.

They also assume that it is impossible to correct the evils of our economic society, evils acknowledged by all shades of opinion. According to them it is inherent in the capitalistic system that wealth is unevenly distributed, that the rich inevitably become richer, and the poor, poorer, and that it is impossible under the present circumstances to provide better conditions of housing, conditions of living, education, and opportunity to share in the higher culture. They refuse to believe that under the present system the economic gains of the working classes in the last fifty years can be permanent.

Bonger contends that the egoistic tendencies which appear in full force in the criminal are not innate but are the result of the mode of production. He attempts to show that in primitive societies the members of the group who share with each other in time of need do so because they have not learned through the use of money to dispose of their surplus products for a commodity which enables them to save their labor from one day to the next. This altruism, says Bonger, rests upon a system of production which is non-capitalistic, so that the egoistic impulses are stifled, while the altruistic are developed by the fact that unless they help each other in time of need the whole group suffers and may perish. On the other hand, according to this author, the capitalistic system releases and develops all the egoistic impulses of man and strangles his altruistic characteristics.²²

One who is acquainted with the life of primitive peoples will not forget their poverty and the fact that they have criminals in spite of this system which to Bonger is ideal. The only difference between the poverty of the primitive tribes and the poverty of civilized man is that it is universal among the former. It may be that crimes of cupidity are rarer among them than among the civilized, although we have no fact on which to base such a judgment. Nevertheless, however ideal may be the economic organization of

²¹ Tarde, *Penal Philosophy* (Boston, 1912), pp 389, 390

²² Bonger, *op. cit.*, pp 381-401

primitive people, they have their criminals. The customs of every primitive people and the earliest codes of law show us that primitive peoples have the same struggle with crime as civilized peoples. The assumption of the socialist that a change in the fundamental economic organization would do away with the evils of our society while retaining all of its good points is entirely gratuitous and rests upon no facts in the history of mankind. How would their proposed change in the economic organization materially affect the law of population and the law of diminishing returns in industry? Until some method can be devised whereby mankind can reproduce *ad libitum* and at the same time have commodities to meet the reasonable needs of all, the present writer cannot see any way by which poverty with all of its effectiveness in producing criminality can be prevented. Least of all can he see how this change will come about under a system in which all prudential restraints on the multiplication of population are removed and most of the incentives now operative to effect saving and to stimulate industry are destroyed.

THE MECHANISMS BY WHICH ECONOMIC CONDITIONS INFLUENCE CRIMINALITY

What we should really like to know is how these economic factors play upon the personality and produce the criminal act. We shall have to go back to our general theory that conduct is the outcome of the reactions between the biological organism and the stimuli to which it responds. Economic conditions are a part, and in our society a rather important part, of these stimuli. In our ideology economic welfare is looked upon as fundamental to social welfare. Economic conditions, therefore, play a part in developing the personality. These conditions playing upon a certain type of organic constitution may develop a personality which desires to obtain economic status without the discomfort of earning a living. On the other hand, poverty presses upon large numbers of our lowest economic classes and causes a loss not only of economic status but of social status. The desire for status is sociologically one of the fundamental wishes of the human kind. Practically all of us wish to occupy a place of respect and esteem among our fellows. If a group is composed of those who hold certain beliefs with regard to economic honesty quite different from that which dominates those who make the laws, then you have the possibility of economic and social status within what may be termed an anti-social group. Consequently, even the social motives emphasize the economic factors in producing an anti-social reaction.

Furthermore, economic conditions create desires and reward those who

satisfy them but punish those who fail to do so. Economic conditions also make demands upon those with inadequate native ability which lead to compensations contrary to the law. They also lead to certain marginal activities which lie on the line between approved and prohibited activities. That is the reason why the criminal who commits an economic crime can say that his activities are no worse than those of respected citizens who also have committed questionable acts but were still within the pale of the law.

The desire for profit in the making and sale of alcohol leads to the commercialization of the liquor business and helps to set up standards of convivial conduct which in certain natures produce anti-social activities. Again, the economic conditions in our capitalistic societies make for unequal distribution of wealth and income, produce class strife, and provide a basis for violent efforts to remedy the unjust situation. Once again, as things are organized in our society, economic conditions frustrate some of the fundamental wishes such as Thomas's "desire for security," the "desire for new experience," the "desire for response," and the "desire for recognition." Some natures, to compensate for these frustrations, engage in crime. Furthermore, economic conditions under a *laissez-faire* order tend to crowd people into slums, with disorganized homes, produce whole groups of anti-social neighbors, and permit the growth of demoralizing institutions. Without question in these indirect ways the economic order causes social conditions which as we shall see play very important parts in the making of the criminal.

IMPORTANCE OF THE ECONOMIC FACTORS

The weight of the economic factor in producing criminals cannot be determined from our present knowledge. Some of the data I have cited may be suggestive, but they are not conclusive. While these factors are not the only ones which play upon the subtle mechanism of a man's soul, and while we must not lose sight of the natural characteristics of the individual which to a large degree determine his social and economic status, on the other hand we must not forget that for the great majority of adult men the struggle for a livelihood makes them keenly susceptible to the psychological results of their economic experience. Nor may we forget that even for those who have a barrier between themselves and want, their ambitions for social prestige may only whet their cupidity. Their struggle then is no longer for mere existence, but for social position and economic domination. Thus for one class economic need may provide the incentive which leads them into crime; for the other, social prestige and the social advantages more money will secure for them may tempt them beyond their power of

resistance. Still further, we must not forget that many of the social conditions which have an unfavorable effect upon conduct are tied up closely with economic conditions.

QUESTIONS AND EXERCISES

1. If need sometimes influences the poor man to steal, how do you explain the embezzlement of the rich man?
2. It has been claimed that economic need drives young saleswomen to prostitution. How would you explain the high delinquency rate of domestics who are sure of their board?
3. Why are employed children more apt to become delinquent, while unemployed male adults seem the most prone to criminality?
4. Prepare debate briefs on the question: Resolved that public ownership of the instruments of production would materially lessen crime.

CHAPTER XI

SOCIAL FACTORS: THE HOME, PLAYGROUND, AND SCHOOL

SOCIAL conditions, i.e., all the economic, political, recreational, family, neighborhood, church, and school environments, are the external stimuli which excite the organism to the various forms of activity. With an individual organism having tendencies determined by heredity and modified by developmental experiences, the social circumstances condition the manifestation of these inherent and acquired characteristics.

INFLUENCES IN THE HOME¹

In the studies that have been made on the influences of the home upon delinquency, especially juvenile delinquency, a number of important aspects appear.

The Immigrant Home. Every study of immigration and delinquency has shown the high rate of delinquency among the children of immigrants. This fact is brought out by a report of the Immigration Commission of the United States.² Healy and Bronner, while indicating that there is a difference in the incidence of delinquency among the children of immigrants as between nationalities, found that on the whole they do worse than the children of native-born Americans.³ The Gluecks found the same thing among

¹ See Breckinridge and Abbott, *The Delinquent Child and the Home* (New York, 1912); Healy, *The Individual Delinquent* (Boston, 1915), Book II, Chap. 6; Burt, *The Young Delinquent* (New York, 1925); The Crime Commission of New York State, *A Study of Problem Boys and Their Brothers by the Sub-Commission on the Causes and Effects of Crime, 1929* (Albany, 1929); Glueck and Glueck, *500 Criminal Careers* (New York, 1930); Lund, *Ueber die Ursachen der Jugendsozialität*; Shideler, "Family Disintegration and the Delinquent Boy in the United States," *Journal of Criminal Law and Criminology*, January, 1918, p. 709; Healy and Bronner, *Delinquents and Criminals, Their Making and Unmaking* (New York, 1929), *Children under Institutional Care* (Bureau of the Census, Washington, 1927); *Juvenile Court Statistics*, Children's Bureau Publication No. 195 (Washington, 1927), Shaw and McKay, "Social Factors in Juvenile Delinquency," National Commission on Law Enforcement, No. 13, *Report on the Causes of Crime*, II, 271, Thomas and Znanecki, *The Polish Peasant in Europe and America* (New York, 1927), Part III

² *Immigration and Crime*, 61st Congress, Third Session, Senate Document 750, p. 1, see also National Commission on Law Observance and Enforcement, No. 10, *Report on Crime and the Foreign Born*, Section VII

³ *Op. cit.*, p. 119.

their 500 criminals. There were two and one-half times as many persons who were native-born of foreign or mixed parentage in their reformatory group as are to be found, in proportion, in the general population.⁴ For the child of immigrant parents, adjustment to American conditions comes about largely through influences outside of the home. Ignorant of American conditions, the foreign father and mother find it difficult to provide for the proper adjustment of their children to American conditions.

Thomas and Znaniecki have pointed out the process by which the immigrant home becomes a disintegrating factor for the children. The parents come to this country with a complete equipment of attitudes and traditions formed in the old country. They are less affected by the American social environment than the children. On the other hand, the child grows up and is subject to the constant pressure from other children, in the schools and on the playground, of a different set of attitudes, customs, and ways of looking at things. Consequently, the culture complex which the parents have brought with them and attempt to impose upon their own children in America comes into conflict with that to which the children are subjected outside the home. Parental control is therefore lessened, and the children suffer in their conduct.⁵

A study by the writer of ninety-two "lifers" in the Wisconsin State Prison showed that the lifer was one and one-half times as likely to have been born of foreign-born parents as a man of the same age in the general population of the State.

The Poverty-stricken Home. Another factor producing the criminogenic home is poverty. Breckinridge and Abbott, in an early study in Chicago, found that of the boy and girl delinquents 76 per cent of the boys and 90 per cent of the girls were from very poor or poor families.⁶

Healy and Bronner found in a study of juveniles from the Juvenile Court in Chicago that one fourth of the cases in their new series of studies were from homes so poor that poverty was a factor in the delinquency.⁷

In a later study Healy and Bronner found poverty in the family a less important factor.⁸ Lund found that of his 806 Swedish delinquents 66 per cent of the families were either poor or very poor.⁹ Of the non-delinquent

⁴ *Op. cit.*, p. 113.

⁵ Thomas and Znaniecki, *op. cit.*, Vol. II, Part III, Division 2, Chapters 5 and 6, pp. 1776-1821.

⁶ Breckinridge and Abbott, *The Delinquent Child and the Home* (New York, 1912), pp. 63-65.

⁷ Healy and Bronner, in *American Journal of Sociology*, XXII, 50, 51 (July, 1916).

⁸ *Delinquents and Criminals, Their Making and Unmaking* (New York, 1929), p. 121.

⁹ *Op. cit.*, p. 45 (See note 1).

children whom he used as a control group only 26.7 per cent came from the poor or very poor families from which came 66 per cent of his delinquents.

Many times the poor home means the lack of common decency. Frequently it means absence of parents from the home, no proper discipline, resort to the streets for companionship and recreation, lack of proper food and medical treatment, with consequent truancy, and early employment of the children. Frequently the young girls grow impatient of hard work and run away. Often the mothers of these children are obliged to work away from home and cannot provide proper supervision. Frequently the families are so poor that the children are deprived of the means to purchase those simple necessities for childish enjoyment which their school friends frequently can afford. Moreover, these poverty-stricken homes are frequently in a slum where the children band together to secure the things which the poverty of their families denies them.

The Andrews Case.

Stasia and Stanley Andrews, eighteen and seventeen years old, respectively, were born in the United States of Polish parents. This family came to the attention of the Judge Baker Foundation through Stasia. In the study of the case, however, it soon appeared that a family drama was back of Stasia's delinquency. Stasia's mother complained to the Polish worker in a near-by settlement that her daughter was nervous, excitable, and so strange in her behavior that she was sure there must be "something wrong with her head." Stasia finally left home and took a room in the neighborhood. Shortly after, Stanley was also seen for the reason that vocational guidance was desired in his case, although he was beginning to become delinquent.

The parents of these children show an intricate complication of poverty, bad health, and incapacity for the responsibility of bringing up a family. The father appears intelligent. When young, his relatives report that he loved music and was fond of fine things. His family regarded him as nervous and easily excited and very anxious about his own health. As an upholsterer, he has had a very hard time making a living. Moreover, he had a congenital hip deformity, which, with his poverty, seems to have somewhat embittered his spirit. His relatives claim that he has always had a bad temper, is stingy, and asserts in an obnoxious way his mastery as the head of the family. He even insisted on buying his wife's clothes.

The mother married her husband at twenty-four and had only a very limited education. She appeared to be overworked, worn out, and discouraged by the struggle through which she has gone.

Stasia presents no physical abnormalities. She is attractive and shows good taste in simple dress. "Her features are refined, her expression responsive and

her manner quiet and friendly." She has fair average ability, so far as revealed by a mental test. There is no sign of abnormality in judgment, will, or emotions. The examination revealed no abnormal personality traits. Her mother, however, reports her irritable at home, sarcastic, showing ill-will to the other children, and jealous of her older sister. In school she formed friendships normally, has shown no extraordinary interest in boys, has a nice girl chum, is fond of reading, enjoys motion pictures, and recently has joined a girls' club. She graduated from grammar school when a little over fourteen, after which she at once found employment, took a commercial course in a night school, has always worked in factories and has held her job well, working in only three places during four years. From one of these she was dismissed only because of bad business conditions and later was asked to return.

In Stanley we have a boy decidedly small for his age, with pleasant features and lively expression, quick in movement and speaking with dramatic gestures. Aside from his under-height and poor strength, the physical examination showed no abnormalities. His intelligence quotient of 85 showed a very much lower average ability than that of his sister Stasia. The clinic adjudged him to be a border-line psychopathic personality, but suggested that some of his instabilities probably were temporary, due to adolescence. Certainly he was above the border of mental defect. His personality traits showed him suggestible, easy-going, easily discouraged, but honest. He has no very special interest and reads but little. Recently he has been going with bad companions, one of whom had a court record. Stanley had a bad school record, graduating from grammar school at sixteen. He has held three jobs, each for only a short time.

The home has been in congested tenement neighborhoods and consisted of four or five rooms. As long as Stasia was in the home, it was clean and neat.

Stasia's story at the Foundation revealed that she has never been happy at home. She has had a grudge and dislike for her father, which appears to have been the result of a number of incidents during her life. She remembers that at five her mother had promised to take her with her on a shopping expedition, because she had been very good, and her father forbade it, for no special reason. She cried and her father beat her before customers in the shop. Then her father was very disagreeable about her likes. She was fond of dancing around the house and waving her arms about, which made him furious because he had a sister who went on the stage. Moreover, while her father never drinks, he is unclean about his person, and that disgusts her. She adds that he swears a good deal in Polish, but he is not obscene. She likes music but, while her parents gave Rosa and Vladimar music lessons, she has been denied that privilege. Moreover, while she was active and fond of exercise, she had to keep quiet at home and the noise of the others practising and quarreling, she says, nearly drove her "wild." She does not think that any outside influences have had much effect upon her life. She is sure that bad companions have had no influence. She has never shown any interest in the opposite sex. Moreover, she

has never had any worries or difficulties on that subject. She is also irritated by the fact that, while she loves pretty things, she does not have clothes to make her presentable at the parties to which she is invited. She says she worries a good deal about the home situation and at times is quite depressed. Since boarding away from home, she visits her mother but never her father.

With Stanley also the home seemed to present a situation which drove him out and subjected him to influences which were not healthful. Less bright naturally than his sister, he had to repeat two grades in school. Possibly also the home conditions contributed to that result. Without special ability, he worked first as an errand boy. He did not like it and then got other positions, each for a short time. Then he served at a soda fountain in a drug store for about eight months. He left there because the boys with whom he was going would come into the store and yell and call him names. The owner of the store was very nervous and irritable. The situation in the drug store finally led him to give up the position. Then at home nagging went on because he was bringing in no money. His father and mother scolded him, and his oldest sister, Rosa, made trouble for him. As a result, he went away from home with another boy. This crowd of boys who formerly came into the drug store and tried to steal things from the store and called him names is the crowd with which he was going when he was brought to the clinic. He claims that he has not stolen with them and is going to quit their company.¹⁰

Both of these cases show the influence of a poverty-stricken home. In the one case you have a girl of normal personality, having perhaps a rather irascible temper but without mental abnormality. In the case of her brother Stanley you have poor mental ability and perhaps a border-line psychopathic personality. In the case of both you have exceedingly bad home conditions. The home was shabby and unattractive. Poverty created difficulties, their father was bad-tempered and domineering, imposing on members of the household; much friction was to be found, and every day there was some partiality shown to those children who did not oppose the father's will. The result was the development of a feeling of antagonism to her father on the part of Stasia and the development of a feeling of discouragement on the part of Stanley. With a less clear-sighted and strong-minded girl, it is impossible to say what might have happened to her character. With Stanley the situation was somewhat different. Suggestible, easily led and driven from the home by the conditions there, he found companionship and leadership in a gang of bad boys.

The Inadequate Home. A great many studies have been made which indicate a high degree of delinquency in those who come from broken homes.

¹⁰ Judge Baker Case Studies, Series 1, Case 17.

In some of these early studies no comparison was made with a control group.¹¹ Shideler estimated that only 25.3 per cent of the children in the total population are from broken families. On the other hand, he found that 50.7 per cent of 7,598 juvenile delinquents in industrial schools in this country were from broken homes. Healy and Bronner's study of 4,000 delinquents in Boston and Chicago showed that a little more than half of them were from homes in which both parents were living and with whom these children lived.¹² Cooley, who studied 3,053 criminals in New York, found that 47.1 per cent were from broken homes.¹³ The Census Bureau at Washington found that of 10,039 juvenile delinquents admitted to institutions for the first six months of 1923, 56.1 per cent were from broken homes.¹⁴ Of the Gluecks's 306 cases, 84 per cent were from abnormal home conditions.¹⁵ Burt, in England, compared the homes of delinquent with non-delinquent children and found that defective home relationships were much more numerous in the former cases.

In all of these studies an attempt has been made to isolate the broken home as a factor in juvenile delinquency. Shaw and his assistants in Chicago in the Institute of Juvenile Research have shown that other factors must be taken into account in connection with the broken home. They point out that delinquency from broken homes varies decidedly with the area in which the home is found. Consequently, there is no very consistent relationship between rates of broken homes and rates of delinquency. Furthermore, when the total group of children studied was broken up into various nationalities, the broken home appears to have greater significance with some nationalities than with others. For example, the broken home among Jewish children seems to be the least significant, while it has the highest significance among the colored. The range was from 16.3 per cent among the Jewish children to 46 per cent among the colored, and among the children of native white stock 31 per cent. Age also seems to have some effect upon the percentages.¹⁶ Shaw's study on the basis of 1,675 juvenile court delinquent boys with a control group of the same age and nationality consistently

¹¹ Breckinridge and Abbott, *op cit*, Healy and Bronner, "Youthful Offenders," *American Journal of Sociology*, July, 1916, pp 50-51

¹² *Op cit*, pp 121-122

¹³ *Op cit*, p 87

¹⁴ *Children under Institutional Care, 1923* (Bureau of the Census, Washington, 1927), p 323

¹⁵ *Op cit*, p 117

¹⁶ Shaw and McKay, "Social Factors in Juvenile Delinquency," National Commission on Law Observance and Enforcement, *Report on the Causes of Crime*, II, 264-282. See also Shaw and McKay, "Are Broken Homes a Factor in Juvenile Delinquency?" *Social Forces*, May, 1932, pp. 514-533

indicated that the delinquents had a percentage of 42.5 per cent from broken homes, while the control group showed only 36.1 per cent. Consequently, while the broken home is an important influence, it cannot be isolated from other factors in the study of delinquency.

It needs little imagination to understand how in a great city, with its numerous temptations and exposure to all kinds of influences outside the home, the orphan and homeless child, even though perfectly normal in physical and mental make-up, may become the victim of circumstances. The following case is an illustration:

"There is thirteen-year-old colored James, for example, fatherless and motherless, who was used by an older man in a bold attempt at burglary, was arrested, put on probation, but disappeared wholly from the knowledge of the court and cannot be traced, and twelve-year-old Robert, who, after the death of his parents, is charged with cutting another boy and committed to the John Worthy School for eight months, then put on probation, paroled to the manager of the acrobatic troupe of a great circus organization, six months later again brought into court charged with loitering about street corners in bad company, committed to an institution for dependent boys, and after his release wholly lost track of. Fourteen-year-old orphan Charles was first placed on a county poor farm, then became the ward of a children's aid society, was placed successively in four different homes, and was finally brought to court as incorrigible and was committed to the John Worthy School" ¹⁷

The city presents peculiar temptations to *the orphan or abandoned girl*. In numbers the children who have lost both parents are not as great as those who have lost only one. Among the poor, however, this makes little difference, as the one parent is not able to play the part of both father and mother.

A case which will show how easily the girl without parents goes astray is that of Amanda, a fourteen-year-old German girl who lived with a Mrs. M. Mrs. M.'s oldest daughter was immoral, and her oldest son, who drank, seduced Amanda. The latter was not vicious but was wholly untrained.¹⁸

Moreover, girls who have to share the burden of family support with the mother often become delinquent. Such a case was that of the oldest daughter of a Russian mother. Her father had died, leaving seven small children. The mother had to work to support them, and the home was of

¹⁷ Breckinridge and Abbott, *The Delinquent Child and the Home* (New York, 1912), p. 93.

¹⁸ *Ibid.*, p. 94.

the poorest kind, the oldest girl had to work also and give all her wages to the support of the family. By the time she was seventeen she had been in court and in the industrial school for girls twice. Case after case of this sort could be cited.¹⁹

One can easily understand why *delinquency often results from the broken home*. If the mother has to work, she cannot give the proper care to the children. Frequently, therefore, they take up with bad associates. Moreover, the lives of the children are devoid of wholesome amusement; frequently their young lives are tied down to monotonous work and drudgery so that the allurements from outside the home lead them astray. Frequently also their school lives are interrupted. The situation is even worse when the father dies than when the mother dies or deserts. In 14.5 per cent of the Chicago cases the father was dead, while in only 9.6 per cent was the mother dead.²⁰ It is worse by reason of the fact that often the entire income of the family is cut off, and if the mother must then begin to earn she can no longer give attention to her children as she should. On the other hand, if it is the mother who is absent, frequently the father can secure a house-keeper, or one of the older girls may be able to take her place, or the father may remarry. In some cases, when the mother is dead, the father neglects the girl or occasionally abandons her.

Even when the surviving parent is able to secure a housekeeper or remarries, there is the problem of the adjustment of *the step-parent* to the children. In many cases when this adjustment cannot be made and the children are placed in charge of relatives, the adjustment between the children and the relatives is not adequate and delinquency results.

Another complication of home conditions which affects the conduct of children is *desertion*. In the cases of delinquent children in the Chicago court, from 8.4 per cent to 8.6 per cent were cases in which either the father or the mother or both parents had deserted the children.²¹

When the home is broken by *insanity*, a more serious complication appears. Not only are the environmental conditions unfavorable for the conduct of the children, but frequently the mental weakness is inherited by them.

Logically related to the broken home as a factor in delinquency is *illegitimacy*. The facts with regard to incidence of delinquency among illegitimate as compared with legitimate is somewhat conflicting. The European

¹⁹ Breckinridge and Abbott, *op. cit.*, p. 96

²⁰ *Ibid.*, p. 91

²¹ *Ibid.*, p. 92, and Healy and Bronner, *loc. cit.*, pp. 50, 51.

figures seem to indicate a high correlation between illegitimacy and delinquency.²² Lundberg and Lenroot found that in Massachusetts 16 per cent of the children fourteen years of age and over, born in wedlock but under the care of the division of State minor wards, presented unsatisfactory conduct, while of the children of illegitimate birth under the same care 28 per cent were problem children or delinquent.²³ On the other hand, Healy and Bronner found the illegitimate birth-rate in Massachusetts (4 per cent) nearly twice as high as in their delinquency cases in Boston. The higher mortality of illegitimate infants might account for the apparent variation, but Dr. Healy and Dr. Bronner do not think so.²⁴

The reasons for a high rate of delinquency among illegitimate may be:

1. The larger number who start life with a heritage of mental subnormality. At least 22 of the 102 children studied by the Children's Bureau were very backward or below normal mentality.

2. Most of them are born of parents with records of immorality or of delinquency.

3. In their disposition after birth they are subjected to many detrimental influences. Often they do not have suitable homes or are cared for by foster parents who will not deal as patiently with these children as they would with their own.

4. The United States Children's Bureau's study showed a large amount of alcoholism, sexual irregularity, and other forms of delinquent behavior in the heritage and environment of these children.

5. Even when mothers try to keep their illegitimate children they must assume the double parental responsibility, frequently working away from the children to earn a poor livelihood for themselves and the children, and thus encounter almost insurmountable difficulties in giving these children advantages and training which children of normal parentage and homes have. Of these 102 children, 55 had good homes, as far as known, 17 were in homes where there was immorality, 13 were exposed to low moral standards, 11 were where there was lack of supervision, and 6 were in homes where the conditions were poor. Thus 47 out of the 102 had poor surroundings.²⁵

²² Gruhle, *Die Ursachen der jugendlichen Verwahrlosung und Kriminalität* (Heidelberg, 1912); see also Bonger, *Criminality and Economic Conditions* (Boston, 1916), pp. 488-491, for European statistics.

²³ *Illegitimacy as a Child-Welfare Problem*, Part 2, Children's Bureau Publication No. 75 (Washington, 1921), pp. 55, 56.

²⁴ *Delinquents and Criminals; Their Making and Unmaking* (New York, 1926), p. 122, note 1.

²⁵ Lundberg and Lenroot, *Illegitimacy as a Child-Welfare Problem*, Children's Bureau Publication No. 75 (Washington, 1921), pp. 340-367.

From these studies it seems probable that in both the United States and a number of the states of Europe children born out of wedlock have a much higher expectancy of delinquency than other children. While social conditions are not entirely to blame for this situation, since many of these children are born of defective parents, nevertheless mental defect is a serious menace only in a bad social environment. Hence the social status of children with respect to the legalized family may be cited as an important factor in the making of the criminal.

Poor Heredity and Bad Home. Burt has made the most careful study of the relation between hereditary conditions and juvenile delinquency. He found that, as between delinquent and non-delinquent children, hereditary intellectual defects are found three times as often among delinquents as among non-delinquents. Temperamental defects are present twice as frequently. While his coefficient for moral defects found in the ancestry was almost as high in frequency as for intellectual defects, we cannot be certain that the moral defects are of biological origin. On the whole, his investigation showed that the number of juvenile delinquents who were the children of criminals with physical, intellectual, or temperamental defects is comparatively small. Furthermore, these defects do not operate in a social vacuum but are usually combined with bad home conditions in the case of delinquents.²⁶ Burt also found that vice was present in the home in 26 per cent of his delinquency cases, as contrasted with 6.2 per cent of the non-delinquent control group, or over four times as frequently.²⁷

A case which illustrates the result of a combination of defective heredity and bad home conditions is the case of Polly S., known in the institution in which she was placed as "Miss Spitfire."

The Case of Polly S.

She was nine years of age when she entered the institution. Her delinquency consisted of stealing from her mother and the neighbors, insolence and defiance of her stepfather, incorrigible begging, lying, and mischief-making, extreme quarrelsome ness, and abusiveness. She used profane language at the slightest provocation, stayed out at night, fought, brawled, and created as much havoc as lay in her power. Occasionally she played truant. Physically she was a small, thin, pale individual with features small yet decidedly matured. In her violent outbursts of rage she was frequently seized with epileptic attacks. She was examined by a number of psychiatrists on different occasions without agreement as to whether she was an epileptic, a psychopathic personality, or a precocious child. The psychiatrist's report at the time of the child's admission to the orphanage indi-

²⁶ Burt, *The Young Delinquent* (New York, 1925), pp. 51-56.

²⁷ *Op. cit.*, Table 3, p. 51.

cated his impression that the girl would best be treated in an institution where she might receive sympathetic and scientific supervision

Her personality traits were distinctly unfavorable. She was careless in dress and person, extremely talkative, very obstinate, spiteful, and revengeful. She had a shrewd sense of values, was absolutely fearless, imaginative, and possessed unbounded curiosity. When in tantrums she would throw her head against the wall and stamp violently upon the floor. She manifested no abnormal sex tendencies.

Her father is described as a "passive, luckless individual without a trade who made a hazardous living by odd jobs." He was regarded as a stupid, good-natured fellow without initiative and without courage to bear up under trouble.

The mother was a woman of ordinary intelligence, with only a primary school education, who came from a family of normal hard-working laborers. All of them were poor. She seemed to be physically worn out at the time she was seen by the agencies, undernourished and extremely nervous. After her husband's death she began associating with a married man of ill repute and admitted that she intended to marry him as soon as he secured a divorce from his wife. Upon being advised to have nothing to do with the man until his divorce was granted, she consented. About a year after her husband died she married this man, although facts were presented proving that he had served a term in the penitentiary. Constant quarreling in the family ensued, the unhappiness of the home increased, partly by reason of the fact that a younger brother, led by Polly, who had taken a violent dislike to the stepfather, tormented him and did everything he could to prevent harmony between him and his wife.

The extreme poverty of the home doubtless prevented Polly from receiving proper nourishment and care. She was born prematurely, weighing only five pounds at birth. As a small girl she displayed a bad temper and was taught by her mother to pick up gossip from the neighbors and carry it to her mother. By this means she had the neighbors constantly in a turmoil. At seven years of age she was stricken with meningitis and upon her recovery became subject to "spells" which the physician pronounced to be "chronic epileptic seizures resulting from her severe illness." Because of her antipathy to her stepfather she practically lived in the streets after the second marriage of her mother. Constant warfare was on between the stepfather and Polly. She was placed in boarding homes after the death of her father, but because of her tendency to lie, gossip, and make trouble generally, she stayed only a brief period in each one. She then returned to her mother and found the man whom she had learned to detest when he was her mother's suitor ensconced in the home. When he was at home she was never allowed to sleep in the house but often spent the night in the hallway or under the stoop. Nor did he permit any food to be given her. The mother, however, continued to slip food to her unbeknown to the stepfather.

She was fond of teasing and making fun of people and delighted in distorting names and substituting ridiculous nicknames. She readily submitted to any de-

mands of those whom she liked but flared up in the most startling way to those to whom she took a dislike. Constantly during this trying period she was pondering suicide. She had no desire for playthings or books, cared nothing for moving pictures, and was not interested in children's games.

Under such home conditions, with constant wrangling and quarreling, with neglect, hatred, and abuse heaped upon her, "it was quite natural for her neurotic temperament to be so influenced by her environment that she knew no other form of self-expression than through quarrels." The marriage of the mother to the man whom she hated aroused all the worst elements in her nature. However, under proper treatment in the institution she developed into a fairly normal child, ceased to have epileptic fits, learned to control her temper, was finally placed in a boarding home, and five years after entering the institution seemed to be developing into a very desirable personality.

In this case we see the factors of a poor heredity combined with the bad example of a mother, extreme poverty, lack of proper discipline in the home, and irritating social surroundings after the stepfather came into the home which aroused all the worst elements of her nature. Her response to the careful treatment given her in the orphanage shows that the social factors were mainly responsible for her delinquency.²⁸

The Degenerate Home. By the term "degenerate home" we mean one in which there is brutality, immorality, drunkenness, crime, and vice, often in connection with paralysis or insanity, imbecility, and other psychopathic conditions. In such a case the home conditions are unfavorable to the proper development of the children. There is the combination of the poor home and the abnormal heredity which unite to produce moral disaster for the children. Accustomed from their earliest days to low ideals, to indecency, immorality, obscene language, and degradation of every sort, it is not to be wondered at that large numbers of children from such homes appear among the court delinquents.

Healy and Bronner found that 12 per cent of their 4,000 cases experienced excessive quarreling in the home. Unfortunately we have no figures as to quarreling in the families of the general population. In their Boston series they found that girls came about twice as frequently as boys from homes in which there was excessive quarreling.²⁹

In the Chicago court 107 out of 584 boys who appeared in the court in 1903-04 had habitual drunkenness in their families. In the case of delinquent girls, of 157 in the Illinois State Training School from Chicago, 31 were the daughters of drunken fathers, at least 10 had drunken mothers,

²⁸ Drucker and Hexter, *Children Astray* (Cambridge, Mass., 1923), pp. 277-288.

²⁹ *Op. cit.*, p. 126.

27 had vicious fathers, 16 had immoral, vicious, or criminal mothers, and 12 were from families in which other members than the parents were vicious or criminal. The most potent cause of delinquency in girls seems to be the home in which the mother herself is delinquent, or in which the father himself or some other member of the family has committed incest with the child. In the Chicago court records studied by Breckinridge and Abbott, they found a total of 348 cases "in which the court records show that the person under whose guidance the girl was growing up was obviously unfit to be entrusted with her care."³⁰

The studies by Healy and Bronner of Chicago Juvenile Court cases reveal other degrading conditions in the home. Alcoholism, immorality, or criminality was found in from 20 to 28 per cent of the homes from which these children had come. In the later series of 1,000 children they found that 7 per cent of the homes had in them a mentally abnormal parent—insane, feeble-minded, or epileptic.³¹

Probably degeneracy in the home explains in many cases the connection between poverty and delinquency cited above. A study of the cases of delinquency connected with dependency brings this relationship out in many cases. Unless these children can be taken out of these degraded homes, the expectancy of delinquency in their cases is high.³²

The Overcrowded Home. Another condition in the home contributing to delinquency is overcrowding, with consequent confusion. The case of Stasia Andrews, cited above, illustrates this point.

Burt's study in London showed that of his delinquent cases 21 per cent were living in overcrowded tenements, while of his non-delinquent cases belonging to the same social strata only 16 per cent lived in overcrowded tenements. He notes that the correlation between overcrowding and juvenile delinquency is a high one, the coefficient being 0.77, i.e., with delinquents overcrowding is 1.32 per cent times as frequent as with non-delinquents from the same social level.³³ In Breckinridge and Abbott's cases in Chicago, comprising 584 delinquent boys and 157 delinquent girls, 47 per cent of the boys were from families with six or more children and 21 per cent from families of eight or more children. Among the girls the corresponding percentages were 34 and 13.³⁴ Of the 584 boys, 138 were the oldest in the

³⁰ Breckinridge and Abbott, *op. cit.*, p. 107

³¹ Healy and Bronner, *Delinquents and Criminals; Their Making and Unmaking* (New York, 1926), p. 126

³² Breckinridge and Abbott, *The Delinquent Child and the Home* (New York, 1912), p. 112

³³ *Op. cit.*, pp. 84-85

³⁴ Breckinridge and Abbott, *The Delinquent Child and the Home* (New York, 1912), p. 112

family. The connection of this fact with delinquency is to be seen in the lack of discipline in the case of the oldest and the necessity of the oldest contributing to the support of the family and therefore being subjected to the conditions already cited making for delinquency in those cases where the children have to go to work. On the other hand, where the family is large and the house crowded, there is less chance for proper training of the younger children, especially if the mother has to go out to work. Case after case is found in these crowded homes where younger children have been so neglected that they slept away from home in all kinds of places.

Sometimes these cases of crowded homes are the result of the marriage of two people each with a family of children. When, therefore, overcrowding interferes with that individual care and attention which the home should provide, it makes for delinquency.³⁵

Inadequate Parental Control. Defective parental control of the children, whatever be the cause, makes for delinquency. The social function of parenthood is training of the child for such adjustment to the conditions of social life as will fit him to become a useful member of society. Dr. Van Waters says that the home where the interests of childhood are secondary to business, pleasure, or personal ambition is potentially a delinquent-producing home.³⁶ The homes where there is a lack of proper control furnish a surprisingly large number of juvenile delinquents.

Lack of parental control, as well as most of the other home conditions which contribute to juvenile delinquency, is often based upon disharmony growing out of subtle misunderstandings between the inmates. Healy and Bronner, on the basis of 4,000 cases of delinquent children in Chicago and Boston, found that 40 per cent of their cases came from families in which there was a great lack of discipline. Extreme parental neglect was found in 22 per cent of the 2,000 cases from Boston.³⁷ Burt, in his London study, found that in his "list of causes the group showing the closest connection with crime consists of those that may be summed up under the head of defective discipline." Such features he found five times as often with the delinquent as with non-delinquent children. In his analysis he found overstrictness reported in 10 per cent of his cases, while in one case out of every four in his study the discipline was too weak and easy-going.³⁸

It is not poverty or a large family or even the broken home, important as these conditions may be, but the breaking of the golden threads of under-

³⁵ Breckinridge and Abbott, *The Delinquent Child and the Home* (New York, 1912), Chap. 7.

³⁶ Van Waters, *Youth in Conflict* (New York, 1925), p. 67.

³⁷ *Op. cit.*, p. 125.

³⁸ *Op. cit.*, pp. 92-95.

standing, love based on confidence, respect, and esteem that accounts for most of the disasters of childhood and youth. How poorly do we visualize clearly the primary functions of the home!

The families which fail in these functions do so because of the following.

- (1) The parents do not love children above every other interest or ambition
- (2) They are selfish, either in placing economic demands on the children which children should not bear or in so wanting the children to minister to the parents' sense of possession or selfish ambition that the development of the children is stunted or in using the children as pawns in a contest between themselves when disharmony between parents arises.
- (3) Parents fail to understand the feelings, ideals, and longings of their children by reason of difference in age. Happy the father and mother in whose memories still linger the feelings and phantasies of their own childhood and youth, who have not forgotten how often their feelings were wounded by older people who had lost the memory of their own "house of dreams"!
- (4) Parents develop a hypocrisy toward changing attitudes by holding outwardly to the old but secretly sympathizing with the new. You cannot fool the unsophisticated eyes of childhood and youth. Their sensitive souls possess some of the clairvoyant perception which age destroys. They see through the pretenses.³⁹

In our schools we train for everything else but parenthood. We teach "home-making," by which we mean teaching girls how to prepare food, decorate a house, make clothing, and keep the family healthy, but leave out the most important thing of all, man-management and child-management! And the males we train not at all. We stress the economic and æsthetic but quite neglect the psychological and the social.

Why be surprised if children become delinquent, when the home, that most ancient institution for the socialization of the child, fails to function? Is it strange that the school and the church so often fail with the child who has not had about him the influence of a good home?

The importance of the home in determining the future conduct of children is indicated in every careful study which has been made. Healy and Bronner took a thousand cases each from the Chicago study and from the Boston study. They found only 7 6 per cent of these 2,000 young repeated offenders who had been living under reasonably good conditions for the up-building of a child. They remark, "We have no other figures showing such high correlation between background conditions and incidence of delinquency."

Burt summarizes his study of the environmental conditions of the London young delinquent by pointing out that the coefficient of association for

³⁹ Van Waters, *op. cit.*, Chap. II

poverty was 0.15, for defective family relationships 0.33, for vicious homes 0.39, and for defective discipline 0.55. Nothing could speak more eloquently of the influence of the home upon juvenile conduct.⁴⁰

LACK OF WHOLESOME RECREATION

The influence of one's associates and the use of leisure time on conduct have not been studied as extensively as they deserve. Mr. Allen T. Burns a number of years ago made a study of the influence of the parks and playgrounds in Chicago on juvenile delinquency. He could not discover that the large parks had any appreciable effect upon juvenile delinquency. He found, however, that the neighborhood parks and playgrounds had the effect of diminishing delinquency in the children who were within easy walking distance.⁴¹ In 1917 the Cleveland Foundation made a recreation survey of that city. Two parts of that study throw light upon this problem. While Mr. Thurston's study of delinquents showed that over 50 per cent of the spare time of the delinquents was spent in desultory, unguided pursuits, my study of 160 wholesome citizens showed that only 0.7 per cent of their spare time was used in such ways. Moreover, it was clear from Mr. Thurston's study that the associations which the delinquents formed during their leisure time had much to do with their delinquency, while the study of the wholesome citizens showed an abundance of wholesome associations in their recreations.⁴² While one must be careful not to explain such a phenomenon as juvenile delinquency on the basis of any one factor such as the lack of proper recreation, all the indications point to the conclusion that this lack is a factor in producing delinquency. The reason for it is clear. Young people will play. If wholesome recreation is not provided, giving the opportunity to use spare time in invigorating activity with wholesome associates, the crowded streets and the vicious amusement places will provide the opportunity with evil companions.

The following cases make concrete the play of influences in the child's use of leisure time in producing delinquency.

John Smith, aged sixteen years, nine months, born of American parents, one of English and the other of Irish descent, provides an illustration of delinquency due largely to bad companions but complicated by poor parental supervision and understanding, by too much indulgence by the family, and by a lack of constructive

⁴⁰ Healy and Bronner, *op. cit.*, p. 129; Burt, *op. cit.*, p. 98.

⁴¹ Burns, *Charities*, XXI, 25, 31. See also Gillin, *Poverty and Dependency* (New York, 1926), pp. 679, 680.

⁴² Gillin, *Wholesome Citizens and Spare Time* (Cleveland, 1918), pp. 38-42, Thurston, *Delinquency and Spare Time* (Cleveland, 1918), pp. 143-145.

influences in the home and neighborhood. Entering in as a minor factor, however, were certain personality traits such as mischievousness and restlessness, untruthfulness, lack of affection, and lack of response to punishment. He had been in court many times, when from ten to twelve years of age, for stealing, tampering with a railroad signal, serious arson, truancy, and staying out overnight.

Physically he was a short lad, but with good strength. His physical appearance was that of an upright, alert chap, but with coarse features and a rather peculiar and furtive facial expression at times. He was in good physical condition when examined except that he had three bad teeth and complained of having had headaches recently.

Mentally he had only fair general ability, being decidedly poor in language and exceedingly poor in his school work. On mental tests he showed good learning ability but poor concentration. He had very good motor control. There were no signs of any lack of mental balance.

The ancestry shows no positive evidence of bad strains. John's developmental history shows that he was rather small at birth, had a great deal of nutritional difficulty until one and one-half years old, suffered from children's diseases mildly, and had a slight head injury at eleven years of age which cannot be shown to have had significant results. At twelve he was operated on for hernia.

The home conditions were fairly comfortable but very unattractive. Family companionships existed only in a minimum quantity. The mother and father were both away all day, and the grandmother had charge of the boys. She had no control over them, and when the father and mother got home at night they were too tired to exercise any discipline in the case of the boys. There was little family recreation. John had never gone to Sunday school, and the father and mother had failed to establish any relations of confidence with the children. The neighborhood was unattractive, with the houses badly run down.

The parents seemed to know almost nothing about John's companions until he was ten years old, except that they were boys on the street. At the age of ten John became acquainted with an older boy named Mack. This boy, John's mother thinks, was the means of the latter's undoing. He had a bad reputation in the neighborhood. Moreover, after John had been sent to the industrial school because of delinquency, he again fell in with a group of boys who had a bad influence upon him. He was always active in outdoor sports, was considered a good football player, and was fond of exciting moving picture shows, many of which he attended. His reading was almost entirely Alger books and a boys' magazine. He had never shown any interest in girls until recently.

He learned bad sex habits rather early and since then has been suffering somewhat from such practices. He has smoked since he was ten years of age and drinks tea three times a day. Later it was found that he was engaged in homosexual practices.⁴³

⁴³ *Judge Baker Case Studies, Series 1, Case 6*

The following description from Mr. Thurston's study of delinquents in Cleveland shows how delinquency even in a good neighborhood may result from lack of properly guided recreation.

"The offenses of the delinquents now to be discussed were immorality, gambling, and staying out nights. Several of these children were associated in their offenses.

"Nos. 89, 90, and 91 were three girls involved in experiences with boys. No. 89 was a girl of 13, of English-American parentage, she was in the seventh grade and said that she liked school, but not her teacher. No. 90 was 15 years old, an only child of American parents; she was in the second year of high school, quiet, likable, not very good in book work, but good in manual exercises. It was reported that her father and mother were not congenial, each having different interests. The mother had done sewing for five years and often left the girl alone after school hours; the latter stated that her mother attended dances and theaters in the evening with a woman friend, and that her father went to lodges. Both girls lived in good homes, No. 90's family had a slightly larger income than No. 89's. Both did from two to five hours of chores at home daily but used to spend four and a half hours or more on each school day, and seven hours on Saturdays and Sundays each, on street corners and at movies, often meeting boys. No. 89 had never attended social centers, settlements, or playgrounds, but was familiar with Gordon Park, Euclid Beach, and Luna Park. She admitted having been immoral with one boy in his own home and with another in a vacant lot. No. 90 had once for two months belonged to a Camp Fire group of which her mother was guardian, but the girls were not interested. She admitted having had immoral relations with five different boys, usually at her own home.

"No. 91 was a thirteen-year-old girl of Irish parentage, whose mother had died when she was seven years old. She had a stepmother and four brothers, all older, three of them were not at home. The family of five lived in their own house of eight rooms, with a yard and flower garden, in a good neighborhood, and had a weekly income of \$33. The girl was in the seventh grade, a quiet, good student whose home duties and study took more time than those of the girls just described, yet she spent from four to eight hours daily, as did the other two girls, in the street and in activities through which boys could be met. In the summer she went to one of the amusement parks (to be designated, for the purposes of these stories, Y Park) two or three times a week and 'picked up' boys with whom to dance and skate. She is now in an institution, and says that she is sorry that her parents did not send her there sooner. The stepmother said that she could not understand how the girl could have done the things she did without their knowing it. She herself had taken the girl into her confidence and discussed sex questions with her."

Mr. Thurston adds:

"As one thinks over these facts and reads again these brief accounts of serious juvenile delinquency, the conviction deepens that here, in a neighborhood that most people would think exceptionally good, is one of the worst failures in developing wholesome uses of spare time which has been revealed in this study; the conviction too gains ground that juvenile delinquency is no respecter of 'good families' and 'desirable neighborhoods'" ⁴⁴

EDUCATION AND CRIME

In view of the fact that so many criminals are abnormal in one or more respects, the figures on the relation of illiteracy to criminality must not be taken too seriously. Illiteracy, or even a meager education, may not be the cause of criminality, but rather the result of mental conditions which affect both education and conduct.

Relation of Education to the Crime Rate. Of persons committed during the first six months of 1923 to prisons and reformatories in the United States 10.7 per cent were illiterate, while only 7.1 per cent of the general population were illiterate. Among the literates the ratio of commitments was more than twice as great for those with only an elementary education as for those with some college training (31.4 per 100,000 of adult population as compared with 14.3). For the illiterates the commitment ratio was three times that for the college group. The showing is even worse if the comparison is by age-groups. With the 10.7 per cent illiterate among the prisoners, of whom 73.6 per cent were in the age group 15-34, should be compared 4.6 per cent of the general population of the same age-group who were illiterate.⁴⁵

The situation seems to be different in England. The relationship of education to crime in England has been studied most carefully by Goring. His investigation was limited to convicts who had been sentenced more than once. From this study it appears that there is "no significant relation between a convict's formal education, when a child, and the frequency of his subsequent convictions for crime, or that, if any relation there be, it is those who have received no school education who are the least frequently convicted." His conclusion is that "the kind of school education that many have received has no traceable influence upon the subsequent career of convicts; but that, since industrial and reformatory schoolboys must be the pick of those with the greatest law-breaking proclivities, this accounts for

⁴⁴ Thurston, *Delinquency and Spare Time* (Cleveland, 1918), pp 78-85

⁴⁵ *The Prisoner's Antecedents* (Bureau of the Census, Washington, 1920), p 10

the fact that convicts with the worst penal records consist of those who have passed through industrial and reformatory schools."⁴⁶ Goring is of the opinion that even what he calls "effective education," that is, education which has continued long enough to give the school system a real chance at the boy, has very little if any effect upon his future conduct aside from the influence of his intelligence.⁴⁷

On the Continent, Levasseur in France presented statistics to show that with the increase of education between 1827 and 1877 the percentage of the uneducated among criminals fell from 62 to 31 per cent.⁴⁸

Moreover, in Spain, where illiterates comprise two thirds of the population, they constitute only one third of the body of criminals. Says Garofalo, "One need not be a pessimist to recognize, therefore, that the school is without direct influence in the diminution of criminality so far, at least, as the total number of crimes is concerned." He continues, "We see, then, the inevitableness of this supposedly powerful weapon. The saying that 'for every school which opened a prison would close' was never anything more than poor rhetoric. It is needless to dwell on this point. Even if we were without the figures to prove our conclusion, ought not simple good sense tell us that there is no connection between grammar and morality; between an acquaintance with the alphabet and the possession of the noble and ignoble passions?"⁴⁹

It is true that in the crude statistics the uneducated show a greater crime ratio than the educated, but it may well be that lack of education and criminality are the results of a common factor, native incapacity. Or it may be that it is easier for the educated man to obtain employment and thereby make a livelihood than the uneducated man. Consequently, it seems as if education which prepares for the making of a living has an effect indirectly through improving the chances of economic success and therefore relieves the stress which propels some men into crime. Nevertheless, no statistical proof of the influence of education on crime can be produced. Too many other influences enter in, and at best the influence of education is indirect rather than direct.

Education and Type of Crime. In the United States, education seems to have some bearing upon the nature of the crime committed. Of commitments for the first six months of 1923 to prisons and reformatories in the United States illiterates constituted 24 per cent of those committed for

⁴⁶ Goring, *The English Convict. A Statistical Study* (London, 1913), p 275.

⁴⁷ *Ibid* , p. 276

⁴⁸ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), p 136.

⁴⁹ Garofalo, *Criminology* (Boston, 1914), pp 138, 139. (Reprinted by permission of Little, Brown and Co)

assault, of those convicted of homicide 19.7 per cent, of those violating liquor laws 17.3 per cent, of those convicted of rape 14.3 per cent, and of drug law violators 11.5 per cent, and of burglars 10.8 per cent, but of embezzlers less than 1 per cent, of forgers 2.9 per cent, of those guilty of fraud 2.6 per cent, of those convicted of having stolen property 5.9 per cent, of robbers 6 per cent, and of thieves 8.1 per cent were illiterate. Compare with these figures that of illiteracy in the general population, 7.1 per cent, and that of the same age-groups, 4.6 per cent.⁵⁰

A study of ninety-two "lifers" in the Wisconsin State Prison by the writer shows a somewhat higher educational status than for homicides in the United States. Of the lifers of Wisconsin only 9.5 per cent were illiterate as compared with 20.1 per cent of those guilty of homicide in the United States, while 4.8 per cent of the Wisconsin lifers were in the college group as compared with 2.1 per cent of those committed for homicide to the prisons and reformatories of the United States in the first half of 1923.

Importance of School Attendance as a Crime Preventive. If then it appears that the uneducated, no matter what the reason, are more likely to commit crime than the educated, we ought to give attention to school attendance. Children drop out of school in great numbers.

Why Is There This Large School Mortality? A study made some time ago in two cities in Iowa indicates that there are two chief reasons and two subordinate sets of causes for this condition. In a study of 800 working boys it was found that 262 had left school because of necessity, 296 because for one reason or another they were dissatisfied with school life, 154 because they preferred work, and 105 for other miscellaneous reasons which for the most part show social interference with completion of the school career.⁵¹

The Maladjusted School. Even if the child could remain in school, in many cases the education he receives would not prevent anti-social conduct. It may be that crime will result because of his inborn capacity or defects, or it may be because of the character of the teaching he has had. It is probable, as Goring has shown, that the somewhat close correlation between lack of education and criminality is the result of the lack of intelligence in the convict. On the other hand, it may be due to the fact that the school system does not provide in some cases the quality of education which develops in the child those standards and social values which prevent criminality. Says Gabriel Tarde: "It is useless to repeat what has been said on all sides as to the inefficiency, an established fact to-day, of primary instruction, considered by itself and leaving aside religious and moral teaching. This

⁵⁰ *The Prisoner's Antecedents* (Bureau of the Census, Washington, 1929), p. 20

⁵¹ Bloomfield, *Readings in Vocational Guidance* (Boston, 1915), pp. 234, 239.

result ought not to surprise us. To learn to read, to write, to count, to explain a few elementary ideas of geography and physics, does not in any way counteract the silent ideas implied in delictual tendencies, does not in any way combat the object which they seek, does not suffice as a means of proving to a child that there are better means than crime of attaining this object. Only, all this may supply crime with new resources, may modify its methods of proceeding, which become less violent and more crafty, and may sometimes strengthen its nature.”⁵²

So far as the school is to blame for crime, the trouble lies in the lack of adjustment of the school to the capacities and needs of the pupils. The school must not be blamed for its failure with the subnormal, except in so far as it attempts to force that child to learn things which he cannot grasp and to keep a pace of which he is incapable. With a compulsory school law must go an adjustment of the curriculum to the poor capacities of some of the children. Otherwise the school system produces delinquency. The child of poor capacity, discouraged by his failure to keep up with his class, by the nagging often visited upon him by the teacher, by the sneers of his fellows, by loss of the social prestige which is the life of the growing child, and by loss of interest in some of the subjects which he is forced to study, becomes a truant, rebels against authority, learns to find his interests satisfied elsewhere, and forms a habit of anti-social conduct.

After discussing the hereditary causes of crime, Goring adds, “We know that, to make a law-abiding citizen, two things are needed—capacity and training. Within dwells the potentiality for growth; but without stands the natural right to each child born into the world—the right to possess every opportunity of growing to his full height.”⁵³

That our educational methods are not adequately training the child in social morals has long been suspected. Some recent studies into the actual conditions reveal a rather serious situation in the moral training of children. They also throw some light on the methods of moral education. These studies show that under temptation more than half of those tested will cheat, lie, and steal. Some of these tests were statements which the children were to designate as true or false; others were honesty tests on returning excess change given by a shopkeeper when the child made purchases. On the latter test 64 per cent of the children did not return the dime. Tests were given also of honesty in school examinations. The plan was to write a series of questions and answers to them on a blackboard, and to hang a map over the answers, the same questions having been given to the class

⁵² Tarde, *Penal Philosophy* (Boston, 1912), pp. 378-379.

⁵³ Goring, *The English Convict. A Statistical Study* (London, 1913), p. 373.

to be answered in writing. After a certain length of time the teacher left the room and the map, apparently by accident, fell to the floor and revealed the answers on the blackboard. In some of the tests 100 per cent of the children yielded to the temptation to correct their papers as shown by the double sheets of paper, the lower one coated with wax to reveal any change or correction made.

Another set of tests intended to reveal whether children would overpraise themselves or allow themselves unearned credit was given them. The highest score made was 82.3 per cent, made by a troop of Boy Scouts organized two years previously. The failure of this group to make a perfect score was due to some boys who had recently joined, as the boys who had been members for the whole time came through 100 per cent honest. The second highest score, 80.4 per cent, was made by a troop organized six months previously. The third highest was made by a group from a highly efficient private school, made up of boys from high-class homes. Ninth on the list came a group of boys from a typical American public school. The table of different groups is as follows:

Rank	Group	Average in test
First	Boy Scouts (two years)	82.3
Second	Boy Scouts (six months)	80.4
Third	Private school	78.2
Fourth	Private school	75.0
Fifth	Camp Fire Girls (four months)	62.2
Sixth	Boy Scouts (just organized)	60.5
Seventh	Private school	59.5
Eighth	Boy Scouts (just organized)	58.1
Ninth	Public school	56.8

While these tests alone are not conclusive, they raise a serious question as to whether our public and much of our private and family education is paying enough attention to the moral development of children. It is of interest to note that the Boy Scout organization, which emphasizes "honor" and honesty, shows up best in these tests.⁵⁴

Can there be any doubt after such findings that what we have long suspected is true: that the beginnings of crime are to be found in children whose moral education has been neglected? Certainly our schools should begin to emphasize the education of children in social ideals of honesty, as

⁵⁴ Dr Paul F. Voelker, *The Function of Ideals and Attitudes in Social Education* (Teachers College, Columbia University, New York, 1921), p. 99

much as in intellectual processes and attainments. How it should be done is a problem for the specialists in moral education.

Of greater and more fundamental importance is the lack of understanding of children's inmost souls shown by many teachers. Miriam Van Waters in her *Youth in Conflict* has called needed attention to this cause of juvenile delinquency. While the child comes to the school with a certain "set" of temperament and character produced in the home before the school got him, and the school therefore must not be blamed for the difficult material with which it sometimes has to deal, yet its task is to correct the deficiencies of the home. The greatest failure of the teachers is the failure of an understanding heart. How much of truancy, malicious mischief in school, lack of interest, misbehavior, "loud" dress, and immorality is due to the stupidity of teachers God only knows. But Dr. Van Waters and the whole group of modern psychologists and social workers have discovered plenty of cases to indicate that the amount is enormous. Truancy may easily be a justifiable protest against a system or a teacher who cannot imagine the difficulties and emotional stresses of childhood and youth. There are indications that many truants also need medical attention. Think back to your own childhood and recall how you suffered because of some trifling lack of understanding by your elders, whether parent or teacher.

That some schools and teachers are sensible of the need of "the understanding heart" is indicated by the following description by Dr. Van Waters:

"If the school sometimes mishandles its delinquency cases, there are compensating, glorious exceptions. It all depends on attitude of mind toward delinquency, and training, skill and good-will of the teacher.

"May was a tall, thin girl, a sickly orphan who had been brought up in the home of a conscientious woman, mother of a girl about May's age. May suffered jealousy. One day the clothing of the daughter of the home was found slashed and snipped into pieces. May denied doing it. She was locked in a room and fed bread and milk (which she refused) until the woman finally, to avoid scandal, took May to court. May was resolute in denial. The court explained that at present it was not necessary to discover the mystery of slashed clothes; the important thing was the shocking mental and physical state into which the child had worked herself. After examination and physical restoration, May was placed in a home where she attended a small high school, the principal was asked to cooperate in reconstruction of May. Years of effort by this socially-minded woman are now being rewarded. May took a purse from school within a few weeks of admission. No attempt by the principal was made to 'prove' this, or to compel a painful 'confession.' May was told the probabilities pointed to her; if she wished she could make restitution. It was explained to her that stealing is a grave symptom of inner trouble, all her friends were now trying to help

her and pending the 'cure' it would be best for her to work out of school hours to repay incidental losses. She need not 'confess' in words, no force would be used to make her pay if she felt innocent. Three times in two years May yielded to impulse to steal small articles, each time she made restitution. For over a year there has been no stealing; delinquency with boys broke out recently. The court offered to remove the troublesome girl from high school.

"No," said the principal. "This girl is making steady progress in school. Her attitude is not rebellious, it is that of one appealing for help. This is our job. Unless we fail, or the girl begins to injure others, we are going to keep May in school."

"May is about to graduate, after four years' intelligent supervision in this high school."⁵⁵

QUESTIONS AND EXERCISES

1. Point out the conditions in the Andrews home which had a bad effect upon Stasia. Why did she not become delinquent? What other factors entered into Stanley's case?
2. Why is the lack of a father more serious for children than the lack of a mother?
3. What additional factors help to explain the high delinquency rate of illegitimate?
4. Analyze the elements of demoralization in the case of Polly S.
5. Read Chapter II in Miriam Van Waters's *Youth in Conflict* and explain the lack of parental control in many cases of incorrigibility.
6. What in your judgment are the most important defects in our educational system as a character-builder? Which do you consider most important? Why?
7. Explain why illiterates should, more frequently than literates, be found in penal institutions.
8. Outline a program of education preventive of crime.

⁵⁵ Van Waters, *Youth in Conflict* (New York, 1925), pp. 102, 103.

CHAPTER XII

SOCIAL FACTORS. THE COMMUNITY, CUSTOMS, BELIEFS, CLASS HATRED, RELIGION, THE COURTS, PRISONS, CIVILIZATION

COMMUNITY INFLUENCES

THE influence of the conditions in the community upon the production of criminality is not easily measurable. Goring tried to determine the influence of environmental conditions upon his English recidivists. He studied, however, only the influence of nationality, employment, education, alcoholism, family life, and social class. His results indicated to him that "an adverse environment is related much more intimately to the intelligence of convicts than it is to the nature of the crimes they commit. Moreover, since mental defectiveness is closely related to crime, an easily imagined corollary to this truth is that the mental defectiveness of the convict is antecedent to his environmental misfortunes rather than that his unfortunate circumstances have been responsible for the mental defectiveness of the convict, and [his] lapse into crime." It must be remembered, however, that Goring was dealing only with recidivists, his findings have no bearing upon first offenses. Furthermore, it must be remembered that among his convicts there was an unusually large percentage of mental defectives, and therefore the conclusions he reaches tell us nothing of the influence of environmental conditions upon those who are guilty of delinquency but escape the consequences and sometimes reform. On the other hand Shaw and others have shown a different picture for the United States. The disorganized areas in some of our great cities seemingly provide influences which have a very decisive effect on the juvenile delinquency rate.¹ That we may see the operation of community influences in a concrete way upon criminality, I cite several cases.

Miss Claghorn made a study of juvenile delinquency in rural New York

¹ Goring, *The English Convict: A Statistical Study* (London, 1913), p. 287, see also Shaw, *Delinquency Areas* (Chicago, 1929), Shaw and McKay, "Social Factors in Juvenile Delinquency, A Study of the Community, the Family, and the Gang in Relation to Delinquent Behavior," in National Commission on Law Observance and Enforcement, *Report on the Causes of Crime*, Vol II (Washington, 1931), Chaps II-V, Thrasher, *The Gang* (Chicago, 1927)

for the Federal Children's Bureau. She reported her findings in twenty-one of these rural communities and described not only the individual cases of delinquents found but also the circumstances around these children as they developed into delinquents. Nothing will show better the tangle of factors which enter into the making of the criminal than her description of one of these rural communities. Most studies of delinquency have been made in cities, but this story reveals that crimogenic influences are active in many rural and village communities as well. She describes one community as follows:

"The township of A. nestled among the hills, is completely rural in character. Only one level road leads out of A village, which lies in the center of the town. High winds blow on the hills, and the roads are drifted full of snow for several months in the winter, practically isolating the dwellers on the hill farms. The town board appropriates some money for keeping the roads clear, but even so, in the winter one must leave the road and drive through the rough fields to get anywhere out in the country

"These hills are sparsely settled; less than 1,000 persons altogether are found in an area of about 45 square miles. Farming is now the all-important industry, though a little lumbering is also done

"Unscientific farming is still too much the custom around A. The more intelligent farmers are applying the principles of combined dairy farming and crop raising, but the majority still live in ignorance of modern methods. The district is therefore poor. Hay, potatoes, and grain are raised, and in the autumn everyone is busy picking up potatoes. Some of the children stay out of school to earn a few quarters at this work. Two creameries are located in the village.

"A, the only village, straggles on an open flat, from which the hills roll up on all sides. About 200 persons live in the 50 houses, which, with one or two stores and churches, a blacksmith shop, a hall, and the schoolhouse, form the social, religious, and trading units of the town

"At any time of the day you can find a few of the idle old and the incompetent young gathered at the store. The counters on both sides are lined with loungers, most of them young men in the prime of life. The older men play checkers sometimes, but mostly they just sit, and smoke, and chew and spit—and gossip

"There are two churches in the village, and practically everyone not only belongs to one church or the other but actually attends the service and Sunday school. This does not prevent certain crowds of older and younger men from going to a neighboring town and getting drunk, but the church members here hold themselves pretty straight, as a rule, and the churches undoubtedly are felt as a living influence

"In winter the farmers drive in bobsleighs that accommodate the whole family. The back seats of the church are filled with the same young men who

on week-day nights hang around the store and who are considered rather bad characters. Both churches engage in social and philanthropic activities. One, at Christmas time, sends presents to the poor. The two churches sometimes join forces for social occasions, and a most jovial, friendly spirit prevails . . . In one of the churches the minister is very active, and to him and to the Sunday school superintendent of the district the church owes an increasing membership and prosperity. The Sunday school superintendent, who is in charge of all the six Sunday schools in this district, has graded both the schools in A, established training classes for the teachers, and made other improvements.

"Both the churches hold many lively entertainments, the most interesting events of the countryside. These are held in the hall or at private houses, and everyone comes for a good time. But the poverty in initiative and in the range of amusements illustrates the fact that people do not by instinct know how to play

"A social held in the hall during the investigation was typical. Supper tables stood along one side of the long hall. Benches lined the other side and one end. Supper was served at the other end from a raised platform. The older women prepared supper and washed the dishes. About 50 young people were present. Boys from 12 to 30 were here—schoolboys and the same young men who line the store counters every night, who do 'nothing much,' and who have no education beyond the district school. Sam and Daisy Walters, who 'don't know nothing' were the only ones not dressed in 'store clothes' and the only ones who were rather left out of the hilarity. The girls were fine-looking and well-behaved, the same girls who attended high school in a neighboring town, or who are preparing to be teachers, or are just staying at home. One young married couple joined in the fun.

"A few older persons, present early in the evening, were a somewhat subduing influence, but after they left the social became a rowdy affair. The great amusement of the evening was a lively kissing game. Dancing was suggested but at a church social it was strictly tabooed as a menace to the morals of the young people.

"When the social broke up at 12:30 most of the boys and girls had to drive from 1 to 3 miles or walk a mile or so. . . .

"There are 11 schools in the sparsely populated township, and they are failing signally to meet the needs of the youngsters. The eagerness with which the children leave school as soon as there is a possibility of escape proves that both parents and children feel this. Even in the village school, where older boys have always been accustomed to attend, only two boys over 14—the age at which they can get work certificates—were found. The girls go out of town for more advanced schooling. In the other schools, with an enrollment of about 100, only 10—5 boys and 5 girls—were over 14. Nearly one-fifth of the children enrolled are retarded. Many of the children live a mile or so away from the schoolhouse, which makes it impossible for them to attend when the weather is bad. Seven teachers are young girls with little or no experience and little judgment, and they are always having trouble with the older boys. . . .

"The village school has been difficult for any teacher to handle. One, a young man, tried to win the scholars by kindness. He went swimming with the boys, taught them to dive, and played ball with them; but they treated him so badly that he had to give up the school. Another young man of fine character finished out the term. He told the Sunday-school superintendent that he was never in a school where such low moral standards prevailed. Even the girls would write vile things in the closets. His successor was a good teacher, but he had such a sour face that the scholars hated him. The boys led by the reprehensible 'Doc'—the prize bad boy of the village—used to badger him to such an extent that it is amazing the townspeople would allow it. Another teacher became so discouraged by the criticisms of the village people that he took little interest in trying to teach anything, and most of the older boys left.

"The whole atmosphere of the school is one of laxity, indifference, and license. The pupils are rude to one another and to the teacher. The schoolhouse is gaunt, bare, hideous. There is a fairly good library, and the teacher takes a boy's paper to school for the children to read. Formerly a club to interest the children in agriculture was maintained, but it died out."

With such a background is it any wonder that delinquents are made out of the children living there? One of many cases from this community described by Miss Claghorn is as follows:

"Edward Lane, nicknamed 'Doc Parker,' after a physician who attended at his birth, is an incorrigible child, who gives a great deal of trouble but has a cherubic cast of countenance. He is a sturdy, rugged little boy of 13, markedly undersized for his age.

"'Doc's' father was an expert driller in the oil fields, but the field became exhausted and he returned to A, the home of his wife's people. Here he is a day laborer. When working on the State road, near the railroad tracks, Mr. Lane and the 'Gang' used to get uproariously drunk. 'Doc,' who often accompanied his father, was given his share of the liquor. When the child would become partially drunk, his father and the other men would regard it as a huge joke. The boy smokes a pipe.

"The first half of the year 'Doc' went to the village school of A. His attendance was fairly good, and he was bright, but unwilling to study. The justice of the peace foresaw trouble with 'Doc,' because the boy was badgering the school-teacher, and sent for a juvenile docket. Nothing, however, was done. The people of the town believed that 'Doc' is good-hearted, not mean. The present teacher, however, says that he is a sneak, and is of the opinion that only his small size saves him from the punishment he deserves" ²

Her cases suggest several conditions which contribute to the making of the criminal. In addition to the tangle of bad heredity with poor environ-

² Claghorn, *Juvenile Delinquency in Rural New York* (Washington, 1918), Children's Bureau Publication No 32, pp 76-80

ment, we have here illustrated the terrible poverty of wholesome neighborhood influences on the one hand and, on the other, the presence of degenerate personalities, degraded homes, demoralized schools, and low community ideals and customs.

Such communities present clearly the results of the migration of the strongest, the most alert, and socially the best elements of the population. More promising communities economically or socially have drawn away the enterprising elements of the population, leaving behind the less alert, the inert, and the socially degenerate. They give the low moral tone, the lack of initiative, and the satisfaction with the elemental passions shown by this picture. How hopeless to expect such communities to provide inspiration and guidance to children and youth! The whole social atmosphere is laden with moral miasma. These "fished-out ponds" of population, to use Ross's phrase, have left in them only the bullheads, suckers, and carp which flourish in murky waters and feed on social sewage.

Raise such conditions to a much higher intensity in their impact upon the developing child by crowding people thickly into a city slum; throw together in that area recent immigrants with a culture quite different from that of America; mix together different nationalities having culture patterns quite unlike, provide none or at best insufficient constructive institutions adapted to conserve the solidarity of the family and to produce homogeneous community values and attitudes; add to these elements the presence of a large number of influential but disorganized personalities, and you have a combination of circumstances in the community which prevent the moralization of growing children in accordance with the standards of the great community of which that area is only a part. Thomas and Znaniecki have delineated such a situation in connection with the Polish immigrant in America, and Clifford Shaw has presented in detail the picture of disorganized communities in Chicago and other large cities.³

Next to the home, and sometimes more important than the home, the community is formative in the life of the child. If he is the child of immigrants, the neighborhood, the streets are where his Americanization occurs. Here in the free and spontaneous activities with children and youth of his own age he forms his ideals and attitudes. Here his social values take shape. Every careful study of the delinquent shows the potency of the neighborhood atmosphere. Here are the "big shots" in crime, the heroes of the neighbor-

³ Thomas and Znaniecki, *The Polish Peasant in Europe and America* (New York, 1927), Part III, especially pp 1647-1654, 1776-1827, Shaw, *Delinquency Areas* (Chicago, 1929), Chap. XVI, and especially Shaw and McKay, "Social Factors in Juvenile Delinquency," in National Commission on Law Observance and Enforcement, *Report on the Causes of Crime* (Washington, 1931), Vol II, Chaps 2 to 5

hood, fascinating the children and young men and women. Here the gangs of boys provide material to the older gangsters from which new recruits may be obtained.⁴

Thomas has pointed out⁵ that often the cause of delinquency is the lack of the stabilizing influence of a neighborhood or a community. The function of the family, neighborhood, or community in a static society is to define a situation by means of standards which repress certain wishes and encourage others by providing certain stays or methods of social control. They determine conduct according to the standards obtaining in that family, neighborhood, or community, and they prevent misconduct. Here, however, we see the operation of these community standards in quite a different way. The difficulty in these communities, and in hundreds of others of which these are types, is that the standards are so different from those which the greater society recognizes as desirable that observance of the family, neighborhood, and community standards results in delinquency. These cases illustrate the influence of degenerate communities in the making of the criminal.

Moreover, as Miriam Van Waters has most vividly shown, youth to-day, as perhaps in every age, is possessed with a feverish tendency to question the standards and conventions of society. Youth is constantly asking the reasons for accepted standards and traditions to the irritation of older people. Youth demands, instead of the easy path of conformity, the vivid reality of fresh experience, the emotional warmth of daring, adventure, and the simple, unsophisticated, direct approach to the problems of life. That seems to be one of the functions of youth. The young person looks at the world of reality through the fresh eyes of inexperience with an artificial man-made society, without regard to the sacredness of precedent, custom, or convention. He wishes to realize his new-born impulses and ideals. But, behold, confronting him are standards, age-old and encrusted with all the hoary stubbornness of precedent and tradition. Then to his joy he finds alongside these standards others held by certain groups in the community which clash with the old and generally accepted and which symbolize his own sense of rebellion against established standards and methods of social control. Moreover, in magazines, in the movies, and in novels he finds vivid presentations of different standards from those held by the dominant group, and he is encouraged in his rebellion. *In other words, the elements of emotional conflict are provided by two sets of standards presented by different groups of society, as well as by the attitudes natural to exploring, experimenting ado-*

⁴ White House Conference on Child Health and Protection, *The Delinquent Child* (New York, 1932), pp 193-224

⁵ Thomas, *The Unadjusted Girl* (Boston, 1923), pp 70 ff, 159

lescence endeavoring to realize a sense of achievement in personal development. The tragedy occurs when society fails to protect the youth from the disaster resulting from unresolved conflict by giving him opportunity to understand the reason for social standards in sex morality, property ethics, and community rights and responsibilities.⁶

CUSTOMS AND BELIEFS

Among the agencies of social control none have played a greater part than customs and beliefs. Strangely enough customs and beliefs may become forces for anti-social conduct, as well as means of social control. The explanation is found in the customs and beliefs of different groups.

The Use of Alcohol. The drinking of alcoholic stimulants goes back to time immemorial. The commercial use of wine is at least as early as the Code of Hammurabi of Babylonia (2380 B.C.). The evils of excessive use of alcohol soon became apparent. The writers of the Bible, after the time of the writing prophets (8th century B.C.), condemn in unsparing terms the drunkard. In spite of the praise of wine as a means of increasing sociability, many of the writers of classical times saw the social evils which flowed from the abuse of alcohol. In recent times the connection of alcohol with crime has become even clearer. Medical science and biochemistry have made it clear why alcohol is a generator of crime. Alcohol is a narcotic which paralyzes the higher brain-centers which control conduct. It produces a delirium very much like the delirium of some of the insanities. Moreover, its use when long continued often produces a form of insanity and leads to ultimate mental breakdown.

The extent of crime due to drinking customs varies in different parts of the world and for different crimes. It has been estimated that at least 60 per cent of the graver homicides, about 82 per cent of the minor crimes of violence, and at least half of the crimes of lust are chiefly due to alcohol.⁷ My findings in a study of murderers and sex offenders in the Wisconsin State Prison indicate a much lower incidence of drinking or drunkenness at the time of the commission of the crime. Only 27 per cent of each of these classes of offenders had been drinking at the time the crime was committed.

In the Court of Domestic Relations of Chicago for the year ending April 30, 1913, there were 2,432 cases of wife or child abandonment or of failure of parents to support their children. The excessive use of alcohol was an important factor in these family disruptions, 46 per cent of the cases being

⁶ See Van Waters, *Youth in Conflict* (New York, 1925), Chap. 5.

⁷ Howard, "Alcohol and Crime," *American Journal of Sociology*, XXIV, 72 (July, 1918).

associated with that factor.⁸ Of 26,672 persons convicted in one year in one State for all classes of crime, 21,863 were under the influence of liquor at the time the crime was committed.⁹

Aschaffenburg presents figures which indicate that the habitual drunkard is less criminal than the occasional drunkard. He quotes statistics from Copenhagen showing that of the thieves 14.6 per cent were drunk at the time the offense was committed, although they were not habitual drinkers, while among the delinquents who had committed crimes of violence the percentage of drunkenness rose to about 65 per cent.¹⁰ He cites similar statistics from the Grand Duchy of Baden. If one studies the statistics for such crimes as assault and battery on the different days of the week, as Lang of Zürich, Switzerland, did for the year 1891, he finds that the largest number of such offenses were committed on Sundays and holidays.¹¹ The following table from Aschaffenburg shows the influence of alcohol on the number of assaults committed on holidays according to the investigations of various students of the question¹²

Day committed	AFTER V KO-BLINSKI		My own* statistics: assault and battery	After Kürz: assault and battery	AFTER LÖFFLER CRIMES OF VIOLENCE AND SEXUAL CRIMES	
	All crimes	Assault and battery			In Vienna	In Korneuburg
Sundays	165	121	254	502	289	120
Mondays	68	32	125	182	190	31
Tuesdays	28	9	69	95	128	30
Wednesdays	20	9	62	67	100	26
Thursdays	20	5	62	62	86	30
Fridays	17	4	48	82	110	24
Saturdays	62	25	103	94	128	50
Unknown .....	..	..	..	32	...	...
Holidays .....	...	...	...	126	63	16
Totals	380	205	923	1,175	1,094	327

* I e., Aschaffenburg's

⁸ *Ibid*, p. 74

⁹ *Ibid*, p. 73

¹⁰ Aschaffenburg, *Crime and Its Repression* (Boston, 1913), p. 75 (Copyright by Little, Brown and Co., 1913 Reprinted by permission.)

¹¹ *Ibid*, p. 76

¹² *Ibid*, p. 78

The following table, quoted from Bonger, shows that in a number of cities Sunday is characterized by the greatest number of assaults:

Day committed	Vienna (1896-7)	Korneuburg (1896-7)	Zurich (1890)	Canton of Dusseldorf	Worms (1896-8)
Sunday	68	72	60	121	142
Monday	49	12	22	32	57
Tuesday	27	11		9	34
Wednesday	19	14	41	9	34
Thursday	19	15		5	35
Friday	18	4	..	4	27
Saturday	28	11	18	35	37

Of course, one must remember that Sunday is not only a day on which people have opportunity to indulge excessively in drink but a day on which contacts between people are much more frequent than on any other day, except a holiday.

Aschaffenburg further points out that most of the student criminality to be seen in German university towns before the World War was due to the abuse of alcohol. Most of the crimes of students were insults, aggravated assault and battery, and resisting an officer. Aschaffenburg believes that these crimes of violence are due to excessive alcoholic indulgences.

Bonger, in discussing crimes of vengeance, has shown that there is a correlation between violent crimes and the acute stage of alcoholism. He quotes Fornasari di Verce, who has shown that in Italy, Great Britain, Ireland, and New South Wales crimes of violence increase and decrease in direct ratio with the consumption of alcohol. In France this has been pointed out by others.

Bonger has attempted to study the relationship between violence and alcohol in another way. In Austria he found that, in 1896-97, 77.7 per cent of those convicted of rebellion, 63.4 per cent of those convicted of malicious mischief, 56.8 per cent of those convicted of threats, and 54.1 per cent of those convicted of serious assaults were in a state of drunkenness at the time of the commission of the crime. In Korneuburg, Austria, the percentages were a little less for these crimes than in Vienna, except that for serious assaults the percentage rose to 56.4. In the Grand Duchy of Baden in 1895, 64 per cent of those convicted of rebellion and 46 per cent of those convicted of assaults were drunk when the crime was committed. In Belgium from 1872 to 1895, of 130 sentenced to hard labor for life, 40.7 per cent, and of eighty-eight condemned to death, 43.1 per cent were intoxicated at the time of the crime. In France 33 per cent of 787 convicted of homicide and

assault were drunk. In Hungary in 1897, 75 per cent of the street brawls, 66 per cent of the cases of resistance to authorities, 50 per cent of the serious assaults, and most of the homicides were committed in drunkenness. In Massachusetts, 1894-95, the percentage of crimes committed while in a state of intoxication ranged from 19 per cent in the cases of resistance to officers to 25 per cent of the murders, 59.6 per cent of threats and violence, 64.7 per cent of homicides, and 70 per cent of cases of malicious mischief. In Norway, in 1886-89, 66.6 per cent of the homicides and 55 per cent of the assaults were committed while drunk. In the Netherlands 51.88 per cent of the serious assaults and 58.04 per cent of the cases of resistance to officers were committed while in this condition. In Sweden, in 1887-97, 67.4 per cent of 6,464 convicted cases of murder, homicide, and other crimes of violence were committed while the offender was drunk. In 1892-96 in Switzerland, 34.8 per cent of the assaults and homicides were committed in drink.

These figures show that of the serious crimes of violence the percentage committed while drunk ranges from 33 per cent to as high as 67.4 per cent. Probably on the basis of these figures from one half to three fourths of the crimes of violence were committed while the offender was drunk.¹³

While the general opinion is that spirituous liquors are of more importance in the production of crime than malt liquors, Aschaffenburg is convinced that beer is more important than the liquors.¹⁴

The indirect effect of alcohol upon criminality may be appreciated when one takes into consideration the close connection between excessive use of alcoholic stimulants and (1) *mental disease and defect*. Many studies have been made showing that the children of drunkards are seldom of normal mental or physical health. Aschaffenburg has cited a number of these studies, and many others are known in our own country.¹⁵ In these cases, however, there is always a question as to whether alcohol has caused the degeneracy or whether degeneracy accounts for the alcoholism and the crime. Into this debate it is unnecessary to enter. The fact that degeneracy and alcohol are close social affinities indicates the dangerous influence of alcohol upon people of unstable minds.

Moreover, the excessive use of alcohol has a very destructive effect upon (2) *the home and family*. The man who spends his money in excessive drinking has less to provide for the needs of his family. Poverty, filth,

¹³ Bonger, *Criminality and Economic Conditions* (Boston, 1916), pp. 639-643 (Copyright by Little, Brown and Co., 1916 Reprinted by permission)

¹⁴ Aschaffenburg, *op. cit.*, p. 119

¹⁵ *Ibid.*, pp. 69, 70

wretchedness result from drunkenness. The family morale is broken down, while drunken quarrels, brutal selfishness, and rough treatment of wife and children tend to destroy all the gentler influences of home which should have a constructive effect upon the development of the children. Thus through its connection with poverty and with physical and mental degeneracy alcohol makes criminals.¹⁶

Prohibition and Crime. The wets and drys have disagreed as to the effect of prohibition upon crime. The facts seem to be that between 1910 and 1923 there was a decrease of 37.7 per cent in all commitments to penal and correctional institutions in the United States. While this decrease was largely in commitments to jails and workhouses and while there was an increase of 13.2 per cent in those offenses which lead to commitment to prisons and reformatories, it must not be forgotten that the present volume of serious crime is made up largely of offenses growing out of new laws governing alcohol and narcotics. Arrests for public intoxication decreased, from 1910 to 1923, 51.5 per cent, and those for vagrancy 52.8 per cent; those for fornication and prostitution 55.7 per cent; those for malicious mischief 68 per cent; those for larceny 53.1 per cent; and those for burglary 11.4 per cent. On the other hand, rape showed an increase of 33.3 per cent, forgery 63.2 per cent, homicide 16.1 per cent, and robbery 83.3 per cent.¹⁷

The later reports of the census between 1926 and 1930 show for males an increase in homicide, repeated robbery, assault, burglary, forgery, larceny, having stolen property, and violation of liquor laws, with increases also for females between the same dates of homicide, burglary, forgery, and violating liquor laws. Decreases for males between those years took place in embezzlement, fraud, sex offenses except rape, and violating drug laws, while for females decreases occurred only in larceny and sex offenses. In many cases both the increases and decreases were but slight.¹⁸ No reliable conclusions of the effect of prohibition upon criminality can be drawn on the basis of objective evidence. There is a pretty clear consensus of opinion, however, that in the large cities the commercial rewards of bootlegging had led to the organization of criminal gangsters who in their efforts to control the industry resorted to all kinds of crimes of violence and corrupted public officials on a large scale.

The Drug Habit. Other drugs which are more or less closely connected with crime are ether, opium, and derivatives of the latter—cocaine and heroin. It is said that ether in eastern Germany before the World War

¹⁶ Aschaffenburg, *op. cit.*, pp. 70-72.

¹⁷ *Prisoners, 1923* (Bureau of the Census, Washington, 1926), pp. 29-31.

¹⁸ *Prisoners, 1929-30* (Bureau of the Census, Washington, 1932), Table VI, p. 10.

had become a competing drug with alcohol. Nevertheless there is a growing body of testimony that many habitual criminals are users of narcotics. When the use of narcotics has become a fixed habit, its victims will commit almost any crime to obtain them.¹⁹

Certain Beliefs and Sentiments. Among the beliefs that may promote crime are that property is robbery, that every one who has any wealth has secured it by improper means, and that the whole product of industry belongs to labor. One will find among criminals such a philosophy of property and cynical beliefs of this nature. When such ideas are held, they become defense reactions to the prohibitions of the law. It is impossible to say how many of our criminals hold such beliefs. The testimony of those who are acquainted with criminals, however, is that such beliefs are quite universal with the habitual criminal.

The philosophy of the hardened criminal has been formed by the group in which he developed. The habitual criminal is free from remorse and has his own justification for his act. Dostoieffski says that the criminal is subject not to the public opinion of the non-criminal population but to that of his own class. He looks upon his punishment not as a disgrace but as a kind of martyrdom for his class.²⁰

The criminal comes to look upon his crime as a *class struggle* in which he finds compensation for his sufferings. Ellis cites a young French brigand, of the days of Charles IX, who said as he ascended the scaffold that he was innocent, as he never robbed poor people, only the aristocracy, whom he described as the greatest robbers in the world. Another said, "We are poor rogues, and so hanged, while others, no less guilty in another way, escape."²¹

Usually these confirmed criminals are *cynical and bitter*. They believe that in society "gold reigns alone," that "the social virtues are cowardly vices," that "an open assault on a rich man" is "less ignoble than the cautious combinations of fraud," that the criminal takes chances similar to those taken by honest men, and sometimes fails. Some appeal for their justification to "natural" justice as against an "artificial" justice. Others believe they are sent of God to punish the avarice of the rich. Most of them believe that the non-criminal part of society is as they, only the others have not been caught.

Moreover, in economic affairs the thief often reflects a kind of *primitive morality*. Said one, "In the face of necessity all things belong to all." Add

¹⁹ Aschaffenburg, *op. cit.*, pp. 88-90. For a concrete instance, see Hutchins Hapgood, *The Autobiography of a Thief*

²⁰ Ellis, *The Criminal* (New York, 1910), pp. 237, 238

²¹ *Ibid.*, p. 238

to that the belief held by many, both inside and outside prisons, that there is no such thing as honesty. Rather widespread in some classes of society is the belief that religion, patriotism, and law are devices for the exploitation of the poor and reckless by the rich and powerful. In other words, the institutions of society are conceived to be instruments of tyranny and injustice.

Furthermore, the miseries of the common lot make a forceful, *sentimental appeal* to those from whom most of the criminals come. It is well known that many criminals are strangely sentimental. Their literature and strange actions show that. Possessed of an elementary morality and denied the culture which ennobles and elevates childish sentiment, many are moved to anti-social acts by such beliefs as we have just cited.

They compensate for their inferior position in life, for the opportunities denied them, and for the injustices in the established social order by flaring out against those who have benefited by that order, and they justify themselves by their beliefs and the warmth of their sympathy for the oppressed. Their sentiments and their beliefs are class-bound.

With such beliefs current among wide classes of society, held uncritically and felt deeply, is it any wonder that some fall into crime? There is just enough truth in these ideas to turn the balance frequently in favor of delinquency.

There are many *customs and beliefs in rural communities* which, if put into practice in a large city, will involve one with the law. The country-bred child who was doing nothing worthy of reprobation when he entered his neighbor's orchard for a few apples, so long as he did not destroy property, finds that when he goes to the city he cannot take apples off the fruit-vender's cart without becoming a delinquent. Moreover, in the lower strata of any population there are always people who believe in the innocence of taking things from those who are in superior positions. The Negro has been accustomed for generations to take part of his living from his master. Sometimes the clerk believes he is being underpaid and therefore feels justified in stealing from his employer. The poor have no conscience against taking coal or other necessities from their rich neighbors or the corporations. Soldiers develop property morals at variance with those which obtain in their home community. Many men in the army learned habits of taking things needed from a neighboring unit without the formality of a requisition. Some of them later got into trouble by following the same habits at home.

VENDETTAS AND FEUDS

In certain societies one is disgraced if he does not avenge an insult to or the killing of a relative. Hence crimes of violence continue generation after

generation unchecked. The feuds of the Kentucky mountains and the vendettas to be found in Italy and the Italian districts of the United States are illustrations of such customs and beliefs.

Growing out of antiquated social customs and ideas, produced by the lack of well-organized public agencies of judicial control, these vendettas or feuds menace the peace and order of whole communities. They characterize backward and criminal communities. The Camorra of Italy originated among incarcerated criminals as early as 1568.²² The Ku Klux Klan in the United States was an extra-judicial organization intended to supplement the established social agencies in repressing what the Klan regarded as undesirable elements in the population. All such organizations spring up in uncivilized societies or in those which for any cause are becoming disorganized. From the point of view of social development they represent methods of social control characteristic of less developed society.

Speaking of the feuds in the Southern highlands of the United States, which have attracted so much attention, Campbell shows that the homicide rate for the mountainous parts is greater than that for the non-mountainous parts of the same States in Kentucky and North Carolina, while it is less in Maryland, South Carolina, Tennessee, and Virginia. However, if the Negro homicide rate for the non-mountainous parts be excluded, the homicide rate in the mountainous parts is higher in all the States than in the non-mountainous.

Campbell offers some interesting explanations of this fact. He says there has always been an intimate connection between whiskey and feuds, that the carrying of arms by mountaineers as a part of their manhood creed is a contributing cause, that miscarriage of law and justice is the greatest cause of the continuance, if not of the origin, of feuds, and that the mountaineer is an individualist by reason of his isolated social life. The whole picture of highland society as given by Campbell shows that the mountaineer believes that justice depends not on the agencies of government, but upon the straight shooting of himself and his relatives. Tie up with that his code of personal honor and you have a social situation which explains the feud with its bloody trail in these American highlands.²³

ORGANIZED CRIMINALITY

The organized gangsters in American life have usually risen out of disorganized relationships in mining communities or in frontier societies or in

²² Lombroso, *Crime Its Causes and Remedies* (Boston, 1912), p. 212.

²³ Campbell, *The Southern Highlander and His Homeland* (New York, 1921), pp. 110-119.

disorganized communities following a war or in societies disorganized during a period of rapid change in the industrial order. Lately they have been motivated by the hope of gain. They existed in our large cities before prohibition, but with its inception they found in the illicit liquor traffic a fertile field for gain. For a quarter of a century there had been organized gangs exploiting gambling, vice, and other outlawed acts.²⁴ With the growth of the City of Chicago, the development of union labor, and the growing competition between laundries, cleaning establishments, and the like, there grew up various "protective associations," "unions," and like organizations which were simply means of extortion of large funds from contractors and small business men for the benefit of the "organizers." Into these organizations drifted the criminals of the city. With the coming of prohibition they simply added illicit liquor to their already established "lines of business" or "rackets," as they came to be called. They had corrupted policemen, aldermen, lawyers, prosecutors, and judges before. They continued to do so when illicit liquor became the "big business" of the underworld. The feuds which arose between these rival "vice lords" and liquor gangs were simply struggles for the control of profits.

LIFE EXPERIENCES

There are certain experiences in life which, especially in childhood or adolescence, are likely to result in delinquency. Bad sex habits are frequently found in juvenile delinquents, especially among the repeaters.

Healy and Bronner found that over 10 per cent of their 2,000 cases in Chicago had a history of such experiences. Sometimes these experiences disturb normal conduct following mental conflict, induced by an experience at variance with the usual standards of conduct. Frequently the delinquency results from the impaired vitality consequent upon evil practices and from the association which they involve with bad characters.²⁵

BAD ASSOCIATES

Often these experiences with tragic results occur through associations with vicious companions. The following case illustrates the point, although not all those who are influenced by evil associates are the natural weaklings this boy showed himself to be.

²⁴ See Landesco, "Organized Crime in Chicago," *The Illinois Crime Survey* (Chicago, 1929), p. 845.

²⁵ Healy and Bronner, "Youthful Offenders," *American Journal of Sociology*, XXII, 49, 50 (July, 1916).

The Parker E—— Case.

Parker E—— was a notorious juvenile law-breaker, pickpocket, tool of a gang of drug traders, incorrigible lar, and runaway at the age of thirteen years. In school he had been very troublesome and was guilty of long and repeated truancy, had used vile and obscene language to teachers and pupils, had influenced the children in his class to be disorderly, and was impudent and disobedient. At home he was unmanageable, abusive to parents, brothers, and sisters, and stole anything which seemed valuable in his eyes. He had a bad juvenile court record for burglary, for assaulting the teacher, and for various thefts. First he was put on probation, finally he was sent to the reformatory; then he was released and continued his nefarious career.

Physically he was a strong, healthy boy. Mentally he showed only a moderate capacity, but his mental health was described by the psychiatrist as essentially normal. He was a member of a bad gang.

In personality traits he is described as careless about clothes and personal appearance, abrupt and impolite, a hearty eater, pleasure-loving, and easily influenced by a stronger mind. Both father and mother were people of seemingly ordinary intelligence. According to report, both had been Russian immigrants; none of the ancestors had been other than normal or fairly intelligent.

Parker's brothers and sisters showed no signs of mental abnormality. The oldest sister had never given any difficulty. The oldest brother had already started a career of delinquency, and a younger brother is described as "a rather mild counterpart of his two older brothers." There was nothing in his developmental history to indicate any physical trouble. He had had the advantages of good and affectionate parents, with a fairly comfortable home and a modest income, and without any quarreling or other difficulties in the home. His mother said that possibly he had lost respect for his father and mother because he had become an American and they were still greenhorns. She indicated that he was ashamed of them and therefore made friends of bad boys. We must not forget the influence of the older brother's example and suggestion and the influence of the gang which completely dominated him. Nor must we forget the fact that his neighborhood was an undesirable one. Without question the older brother's influence was potent in Parker's case.

He had, in spite of so many bad habits and vicious interests, some good qualities. While he was untidy, quick-tempered, impulsive, and ready to lie out of his misdeeds and readily found and consorted with the most difficult children, he was loyal to the pal of the moment, had generous impulses, and was interested in music and dramatics.²⁶

Much more common is the corruption of childhood and youth by vicious and criminal leaders in the slum communities of every great city. The dis-

²⁶ Adapted from Drucker and Hexter, *Children Astray*, pp. 72-77 (Copyright by Harvard University Press, Cambridge, 1923. Reprinted by permission.)

organized life there revolves about anti-social personalities who because of their natural leadership and prestige organize the natural spontaneous impulses of children for their own corrupt purposes. The atmosphere created by these personalities in such circumstances serves as a matrix in which are molded the values and attitudes of the youths who live there.

CLASS HATREDS

When America was younger, and all were poor together, democracy prevented the growth of distinct classes and the consequent class hatred. With the development of commercialism and industry the close relationship between different economic classes such as were seen in hand industry before the industrial revolution ceased. In consequence of the extreme specialization of occupation and the introduction of machine industry on a large scale, class interests have developed and class strife has grown. As a defense against the operations of the capitalist on the one hand and the sabotage of the workman on the other, class strife has become one of the marked features of every modern industrial society. Out of this strife grow certain types of crime and the destruction of those standards of conduct which make for social unity and safety. Says Garofalo on this point: "Certain social causes may operate to retard or even to arrest moral progress. Among these, and not the least dangerous, is the propaganda of class hatred, the preaching of revolt against all the principles of the social and moral order—a movement for which the communists, before turning reformists, shared the responsibility with the anarchists. Not until these doctrines are stripped of their violence will civilization in the true sense of the word be enabled uninterruptedly to continue its progress" ²⁷

In every period of social and industrial unrest, of political or economic oppression, of *class hatreds* arising from whatever cause there appear beliefs which grow out of class irritations and are often responsible in turn for the accentuation of such hatreds. Such beliefs arouse resistance to whatever class or authority is identified with what is felt to be oppression. The Hebrew slaves in Egypt, stirred by the preaching of Moses and Aaron to believe that God was making use of their sufferings to get them out of Egypt to the Land of Promise and that He had commanded them by subterfuge to rob the Egyptians of their belongings, lied to their Egyptian neighbors, borrowed their property, and stole away with it. The modern I. W. W. and the Communists in the United States hold a theory of class strife. Mr. Houd in a publication of the United States Department of Labor, speaking

²⁷ Garofalo, *Criminology* (Boston, 1914), p 136 (Copyright by Little, Brown and Co., 1914 Reprinted by permission)

of the hobo laborers in the lumber camps of the west coast, says, "It is the hobo workers who present the really dangerous element in the labor problem. They are foot-loose rebels who no longer recognize the ordinary conventions of modern society but challenge the whole industrial system of which the relation of employer and employee forms a part. That challenge may be but the dumb resentment of the failure and outcast against the man who has succeeded, or it may be the very much more dangerous challenge of the I. W. W., which has a very positive philosophy to take the place of *laissez-faire* and respect for private property. The I. W. W. refuses to accept any of the assumptions of the employer or of society, and declares eternal and uncompromising war against the whole system in which the employer finds a place."²⁸

At present the divergent economic beliefs of capital and labor, especially of the extremists in each party, move them to activities which sociologically we may define as criminal. Such beliefs result in class wars, strikes, lockouts, destruction of property, and slugging of laborers by hired "bouncers."

Moreover, within every large aggregation of population in cities made up of diverse nationalities and of people with radically different economic levels there develop wide gaps in fundamental interests, in behavior patterns, and in attitudes. The "gold coast" and the slum develop different social values and breed different attitudes toward social aims. There grow up two or more societies: the great society, dominating the entire community, setting the standards, making the laws, and arranging the agencies of social control, and smaller groups with other attitudes and values in rebellion against the former. The rich despise the poor; the poor hate the rich. The American dubs the recent immigrant "wop" or "sheeny", the immigrant often flares back at the American with "the Duke," "the gentleman," "the princess," and "God Almighty." Class hatred thrives with the growth of defense mechanisms which engender strife and provide a seeming justification for anti-social acts.

RELIGION

Numerous studies have been made to show the relative number of adherents of various religions in the total number of criminals. Studies in many countries show that per each 100,000 of the population of the respective religions the Catholics are most numerous, Protestants next, Jews next, and those with no religion least numerous. When these bare figures are

²⁸ "Industrial Relations in the West Coast Lumber Industry," *Bureau of Labor Statistics Bulletin*, No. 349 (Washington, 1924), p. 53

analyzed, however, it becomes apparent that other factors than religion explain the difference. Usually the poorer the people, no matter what the religion, the higher is the rate of criminality. Aschaffenburg has shown that while the Catholics are relatively more criminal than Protestants or Jews, they are also the poorest in the parts of the German Empire studied by him. Moreover, the low criminality of the Jews, except in crimes against property connected with their commercial life, is to be explained in part by the close control exercised over them by the religious authorities of their communities.²⁹

NUMBER SENTENCED TO 100,000 OF THE POPULATION OVER 10 YEARS OLD

	Protestant	Catholic	Jew	Not members of any religion	Total population
All offenses.....	308 6	416 5	212 7	84 2	337 3
Theft	400	548	255	96	439
Aggravated theft.....	199	240	127	52	207
Receiving stolen goods	26	35	92	07	30
Embezzlement	86	93	131	19	87
Fraud	24	25	39	04	24
Offenses against public decency	19	34	20	05	24
Minor sexual offenses.....	12	10	03	02	10
Rape	15	22	15	07	18
Sexual crimes with persons under 16	03	03	01	00	03
All sexual crimes.....	51	71	41	16	57
Rebellion	259	370	132	122	290
Assaults	744	982	432	201	811
Serious assaults	85	110	39	19	91
Homicide and murder.....	04	06	05	01	05

It should be noted, however, that only as religion is socialized, that is, directed to ethical ends in individual conduct and social organization and ideals, does it produce good conduct. If religion is conceived of as a kind of magical means of getting supernatural aid to reach one's ends, no matter whether those ends are social or anti-social, then religion may be found allied with all kinds of crime. Then the prostitute may have the crucifix above her bed, the murderer and the robber may pray for help in their nefarious designs. Only a religion purified of selfishness and shot through and through with social ethics can have any large bearing on the reduction of crime.

²⁹ Aschaffenburg, *op. cit.*, pp. 51-61 (Copyright by Little, Brown and Co., 1913. Reprinted by permission.) Bonger has made the most recent study of religion and criminality, a study of 126,000 individual delinquents in the Netherlands from 1901 to 1909. The table is his.

THE COURTS AND CRIME

The very machinery of justice may help to make the criminal. Designed to give even-handed justice to every man, it often fails for the following reasons: (1) The rich offenders can hire lawyers to defend them; the poor cannot. (2) Delay in bringing the accused to trial often leaves him in the jail, subject to all the evil influences of that institution, because he cannot get bail. (3) So numerous are the technicalities on which a skilful lawyer, in case his client is convicted, can secure a rehearing on the basis of error that many under temptation to crime feel that the risk is not great and are not deterred from crime by the fear of swift and certain justice. (4) Criminals operate under a theory of punishment which assumes that justice is secured by giving to every one who commits the same crime the very same punishment in amount and kind. In actual practice this is impossible, with the result that many convicted offenders feel they have not been fairly treated and develop a grudge against society. (5) Too often the question in the mind of the judge is not what is the best course possible under the law for the good of this individual, giving due consideration to the protection of society, but, how much he should suffer to expiate his crime. Vengeance, even at the hands of the court, breeds the desire for vengeance in some men, and the social purpose of punishment is defeated.³⁰

PRISON INFLUENCE

Even the very institutions we have devised and set up at so great a cost for the treatment of the offender have proved to be agencies of crime. Our jails have been called schools of crime, and the fact that so many of those committed to our state penal institutions are convicted again and again has led to the question as to whether these institutions may not be making criminals more rapidly than they are curing them. There is little question that the determinate sentence, the policy of repression to be found in many prisons, the failure to separate those incapable of reformation from the promising inmates, and the resulting stern discipline which neglects entirely the development of whatever manhood there may be left in the prisoner contribute powerfully to the development of an anti-social attitude in many. Moreover, in the prison itself he becomes discouraged, learns new tricks from those with whom he associates, gets a grudge against society because of the way he is treated, and when finally discharged finds that the

³⁰ See Chap. XXXI of this book and *Illinois Crime Survey* (Chicago, 1929), Chaps. II and III, Moley, *Politics and Criminal Prosecution* (New York, 1929), Moley, *Our Criminal Courts* (New York, 1930), Moley, *Tribunes of the People* (New Haven, Conn., 1932), *Missouri Crime Survey* (New York, 1926), Part IV.

world turns its back upon him and that the only companions he can find are criminals. Says a recent writer, "If they were sincere in that [sending a man to prison for reformation], no man would be kept in prison more than two years, because all the good resolutions one makes in the first year in prison, but after a man has been here several years he gets discouraged and loses ambition to better himself, and gets too stupid to learn anything more than he had learned in the first couple of years"³¹

CIVILIZATION

Civilization itself accounts for some criminality. With the development of ever more complex relationships, the increasing number of laws and prohibitions necessary in civilized society, there is discovered a similar increase in the number of people who are not adapted to the more complex relationships. Doubtless were our society to-day in the stage of development which it had reached in the United States a hundred years ago, many who are looked upon as criminals to-day would be good citizens. Many of the defectives and degenerates who fill our penal institutions to-day in a simpler civilization would get along without great difficulty. On the other hand, some of the variations from type are the innovators and rebels who refuse to conform and thus become delinquent. Says Gabriel Tarde, "We must not, moreover, be alarmed or pained beyond measure at seeing an increase in our ranks of those exceptional beings whom the alienists call 'degenerates,' minds lacking in equilibrium, consciousness without energy. . . Now a civilization may be very rich without being coherent, this is so in the case of ours. Or else very coherent without being very rich; this was the case in the ancient town or the community of the Middle Ages. But is it by means of its wealth or its cohesion that it repels crime? By means of its cohesion beyond any doubt. This cohesion in religion, in science, in every form of work and power, in every different sort of initiative, mutually strengthening one another, either actually or apparently, is in reality an absolute coalition against crime, and even though these fruitful branches of the social order, to continue my metaphor, but feebly combat the offshoot, their concord suffices to draw away from it all the sap."³²

IMPORTANCE OF THE SOCIAL FACTORS

In conclusion, what shall we say of the part played by the social factors in the making of the criminal? We have seen that some delinquents are

³¹ *The Atlantic Monthly*, September, 1923, pp 360-361, see also Chap X^{IV} of this book

³² Tarde, *Penal Philosophy* (Boston, 1916), pp 392-395 (Copyright by Little, Brown and Co, 1912. Reprinted by permission)

to be accounted for by their physical conditions. These conditions are such that they affect the child's chance to make a success of his school work or result in a sense of inferiority or injustice which destroys the incentive to useful endeavor and creates a grudge against society. They disturb the normal development and proper functioning of his body and mind. Sometimes they result in the development of natural passions with which he is not fitted mentally to cope.

The mental characteristics of the delinquent sometimes foredoom him to inefficiency in industry and in social life. He develops defects of mind and character. He is unable to judge of the consequences of his acts. He is suggestible to every influence, good or bad, around him. Sometimes these mental characteristics provide him with urges in defiance of social norms. Naturally he varies in mental qualities from the type suited to social life. He is made to adjust himself to society's demands.

Frequently he is deficient in body and mind because of his heredity. He came into the world literally cursed with a heritage of biological defects and tendencies unsuited to the social standards of his time and group.

Again, the economic conditions of his life are unfavorable. Reared in a home of poverty, he sees evidences of abundance about him. He sees that frequently hard work brings but little reward. Economically society seems to be organized against him. Changes in economic conditions throw him out of work. He wants work; it is denied him through no fault of his own. He feels the opportunities and privileges money will buy. On the other hand, he may be provided for more abundantly than he needs, and he seeks dissipation and reckless living. He is fired with envy of the more successful and the more prodigal. Or, again, he may see that taking a chance brings often greater rewards than plodding industry. He falls under temptation.³³

³³ In a recent magazine article French Strother has stated, "Environment, then, does not *cause* crime, it merely offers, occasionally, an exceptional *opportunity* for crime. But it cannot be too often repeated that *every* situation in life offers opportunities for crimes, yet the only people who commit them are people of unstable emotions"—*World's Work*, August, 1924

In the first place, modern science has become wary of the use of the term *cause*. In social science one should be careful in the use of that term. Social life is so complex that it is extremely difficult to isolate a factor and say that it is the cause. The fact that experience has shown that some of these emotionally defective individuals can be placed under conditions where they will not commit crimes might be equally urged as showing that the surrounding social conditions are the causes of crime.

In the second place, as a matter of fact not all those who commit crimes are emotionally defective, as Strother admits in his article. So long as that is true, it cannot be claimed that emotional defect is *the cause* of crime. It is a condition of crime in the individual himself. Along with that condition, however, we always find the proper social surroundings, putting an unusual strain upon the individual and also accounting for crime.

But over all these circumstances hangs the atmosphere of social influence. The home in which he is reared, the lack of decency there, the crowded conditions, broken family ties, a working mother—all these provide conditions inimical to the child's proper development. Often he must stop school to help earn the livelihood. Frequently he is an illegitimate child placed once or more in a foster home. The streets his playground, he forms associates and learns habits which release anti-social tendencies. The physical defects, the mental abnormalities, and the economic pressures would have little influence were it not that his social relations provide the conditions which develop tendencies which lead him into delinquency. Added to all this are the lack of provision for wholesome use of his spare time, political graft, abuses of the courts, delays and miscarriages of justice; and when he is caught and sent to prison, even the institutions of correction contribute further to his undoing. Society is against him when he comes out and leaves him to the tender mercies of his former "pals." Hence, there is a conspiracy of conditions which account for his becoming a criminal—conditions in his own constitutional make-up, in his early social development, in his lack of training, in his poverty, and in the surrounding social atmosphere, including habits, customs, ideals, beliefs, and practices. The social conditions around him set the stage on which each of these factors plays its part and release in his conduct the good or the evil in his nature. Thus is the criminal made.

QUESTIONS AND EXERCISES

1. Analyze the crimogenic community influences in Township A described in the text
2. Assume that it is true that people are alcoholic because they are defective or nervously unbalanced; what bearing would that assumption have on our attitude toward alcohol as a beverage?
3. Suggest a program for the cure of feuds and vendettas (a) In the Kentucky mountains; (b) in our great cities
4. On the basis of your study, compare the importance of the social factors with the others previously discussed.
5. Discuss pro and con the proposition that prohibition created the gangster and the crooked official
6. Analyze the situation in a great city which produces gangsters.
7. Why should a boys' gang develop into a criminal gang?
8. Suggest a program whereby the formation of criminal gangs could be prevented.

BOOK II
PENOLOGY

PART III
HISTORY OF PUNISHMENT

CHAPTER XIII

THE EVOLUTION OF PUNISHMENT

PRIMITIVE man shares with the animals the emotion of resentment at injury. Man's superior intelligence, however, has led him to refine his methods of reaction and therefore to multiply the devices with which he punishes injury. In general among primitive men death, mutilation, banishment, and compensation have been prevalent. The ties of blood which held men together in a group had some mitigating influence upon the severity of punishment. On the other hand, ignorance and fear led often to barbarous treatment of the offender and the passionate punishment of those whose offenses were not serious so far as the welfare of the group was concerned. As we shall see, fear within the group of the effects of the violation of customs and beliefs resting on ignorance and fear of the gods or of ill luck often inspired savage action against the offender.

RETRIBUTION

When punishment was the instinctive reaction to injury the wronged individual imposed upon the offender such punishments as lay in his power and as were suggested by his own sense of injury. He or his kindred were judges of the severity which should be visited upon the offender. *Retribution* describes the measures taken by an individual or his kin to avenge an injury and those taken by one group against another for injuries suffered by a member or members of the first at the hands of an individual or individuals in the second. The duel is a survival of this primitive method of settling disputes, and the legal duels in our courts are echoes of those primitive methods.

Blood Vengeance. Illustrations of the working of blood vengeance are available from many different sources. According to Tacitus, adultery among the ancient Germans was punished by the injured party. He says: "Adultery is extremely rare among so numerous a people. Its punishment is instant and at the pleasure of the husband. He cuts off the hair of the offender, strips her, and in the presence of her relations expels her from his house and pursues her with stripes through the whole village" ¹

¹ Tacitus, *Germania*, Chap 19

In the Hebrew Scriptures we have a number of illustrations of private vengeance. In the troubled days following the advancement of David to the kingship, there was difficulty between the adherents of the son of Saul and the followers of David. A certain Abner had been captain of Saul's host. On the death of Saul he had taken Saul's son and made him king of Gilead and certain other portions of the territory of Israel. At the same time David had become king in Hebron over other tribes of the Israelites. Among the adherents of David were Joab and his brother, Asahel. A battle took place between twelve men from each side at the Pool of Gideon. Abner's forces were beaten and fled before Joab and his brothers. Asahel pursued the beaten Abner and was slain by the latter. In the course of time Saul's cause died out and Abner made overtures of peace to David and became one of the latter's trusted adherents. Joab, the brother of the slain Asahel, came in after the covenant had been made between Abner and David, learned of this covenant of peace, and protested to David against it on the theory that Abner had used deceit in making the covenant. Unknown to David, Joab sent messengers after Abner and, when the latter came back, took him aside into a dark place in the gate and slew him in revenge "for the blood of Asahel, his brother."² Here we see the law of blood vengeance asserting itself even above the covenant made by the king himself.

Howitt, in describing the native tribes of Southeast Australia, says: "Individual offenses such as theft were dealt with by the individual wronged, by spear or other weapon." He describes a circumstance which shows the working of private vengeance among some of these Australian tribes. Among the Dieri tribe it is thought that when any one dies he has been killed by some one through the action of black magic. An armed party is then sent out to slay the one who has exercised the magic. Near Lake Hope a man had died. The party sent out by the dead man's group to find the one who had caused his death came to Lake Hope and halted twenty yards from the camp and there gathered the spears and boomerangs that were to be thrown at them ceremonially by one of the Lake Hope men. Usually these weapons were easily warded off. In the course of this ceremony, however, one of the men, being dazzled by the sun's rays, did not see the spear coming and was killed. His companions fled to a neighboring place where they organized a vengeance party. The leader of this party found the person who was held responsible for throwing the spear, struck him with a weapon, and slew him.³

² *II Samuel*, Chaps. 2, 3.

³ Quoted in Thomas, *Source Book for Social Origins* (Chicago, 1909), pp. 779, 780
See also Tylor, *Anthropology* (New York, 1889), p. 415

There is no question that under the social organization of primitive societies private vengeance served a useful purpose. Russell, in describing its working among the Pima Indians of our Southwest, says: "The law of vengeance operated to prevent homicide. It led to the elders teaching the people to exercise restraint. They urge upon the younger people, 'Speak not foolishly, do not quarrel and kill your neighbor, for that leads to retaliation.'" Under this instruction, Russell says the youth abhorred bloodshed with one exception: to kill the convicted sorcerer was meritorious.⁴ Tylor also testifies to its public value.⁵

The law of blood revenge operates among primitive peoples not only between individuals within a tribe or clan, but also between groups such as clans or tribes. If a member of one tribe injures a member of another, then blood vengeance becomes a tribal matter. Says Tylor:

"The relation of private vengeance to public war is well seen among rude tribes such as inhabit the forests of Brazil. When a murder is done within the tribe, then of course vengeance lies between the two families concerned; but if the murderer is of another clan or tribe, then it becomes a public wrong. The injured community hold counsel and mostly decide for war if they dare, then a war party sets forth in which the near kinsmen of the murdered man, their bodies painted with black daubs to show their deadly office, rush foremost into the fight. Among neighboring tribes the ordinary way in which war begins is by some quarrel or trespass. Then a man is killed on one side or the other and the vengeance for his death spreads into blood feud and tribal war ever ready to break out from generation to generation."⁶

Instances are found also in the Bible.⁷

LIMITATIONS ON PRIVATE VENGEANCE AND BLOOD FEUD

In spite of the satisfaction which such measures gave to the social conscience of primitive peoples, the evil consequences of this method of punishing offenders soon became apparent. Consequently, certain limitations grew up in primitive societies on these bloody procedures. Among these are the right of sanctuary, individual and group composition for crime, later the Truce of God, and finally the control of crime by the state.

1. The Right of Sanctuary. The staying of the hand of the private avenger, until such time as the question can be settled as to whether the injury was accidental or of set purpose, was met by the device of the right of sanctuary. Adonijah, one of the sons of David, attempted to make him-

⁴ *Annual Report of the American Bureau of Ethnology* (Washington, 1908), p. 198

⁵ Tylor, *op. cit.*, p. 415

⁶ Tylor, *op. cit.*, p. 418

⁷ *Judges*, Chaps. 19, 20.

self king in the last days of his father. Another son, Solomon, however, with the connivance of his mother, seized the power by a *coup d'état*. Adonijah feared for his life and fled to the sanctuary, where he took hold on the horns of the altar.⁸ Joab, who had followed Adonijah, did the same thing.⁹ This protection afforded by the altar rested upon the belief in the holiness of the Deity. This holiness was something magical which had a certain potency attached to it and gave rise to the special taboos applicable to sanctuaries.¹⁰

2. Individual Composition for Crime. In addition to the right of sanctuary in primitive society, the custom grew up that offending individuals and their families might make settlement with the injured and his family. How this practice originated we can only guess, but we find it in ancient times and among modern primitive societies. As long ago as the Code of Hammurabi (2380 B.C.) we find the practice of individual composition established. In this code composition related chiefly to property damage, and not to personal injuries. However, at least in one case it was a substitute for the death penalty. In case the thief had nothing with which to pay, he was to be put to death.¹¹

Among the Hebrews a similar limitation existed, except that it extended also to personal injury. If two men contended and one smote the other with a stone or with his fist with the result that his opponent was badly injured but did not die, the one who injured him was required to pay for the loss of his time and to cause him to be thoroughly healed. If a man's ox gored a person to death and if the ox had been known to be dangerous and the owner had not kept him in, the ox was to be killed and the owner put to death unless the family of the injured was willing to take instead a ransom.¹²

In Arabia the transition from blood vengeance to compensation is to be seen. The nomad tribes outside of cities hold rather strictly to the blood feud, while those living in the towns find that it is necessary to practice compensation for injury and thus prevent the evil results of the blood feud.¹³

The same principle appears in the early Saxon laws known as the "Dooms of Alfred." If a man knocked out the front tooth of another man, he was

⁸ *I Kings*, 1 49-53

⁹ See *I Kings*, 2 28. This reference, however, shows that the right of sanctuary was not always respected by the king, since Solomon ordered that Joab be slain even at the altar, probably on the ground that he was a murderer, since he had killed Abner.

¹⁰ Robertson Smith, *The Religion of the Semites* (London, 1901), pp 161, 162.

¹¹ Code of Hammurabi, Sections 8, 9, 13, 106, 107, 112, 120, 124, 160, 161 Hastings, *Dictionary of the Bible*, Extra Vol, Article, "Code of Khammurabi."

¹² *Exodus*, 21 18, 19, 30

¹³ Tylor, *Anthropology* (New York, 1889), p. 416

to make compensation in the form of eight shillings, or, if it was an eye tooth, four shillings, or if a molar, fifteen shillings. These dooms provided in detail for the various kinds of injuries¹⁴

The same provisions are to be found in the Salic law of the Franks. Compensation was provided in detail for practically every sort of crime from theft and robbery to murder. These compensations were graded according to the rank of the person injured. For example, the compensation for the murder of a free Frank or a barbarian living under the Salic law was 800 denars. In case of composition for death, the money was to go half to the sons of the slain father and the other half to the nearest relatives on both the mother's and the father's side. If there were no relatives, the money was to go to the "fisc."¹⁵ This practice is almost universal among ancient peoples. It is referred to by Homer in the case of Ajax, who reproached Achilles for not accepting the offer of reparation made to him by Agamemnon. Ajax reminds Achilles that even a brother's death may be composed by a payment of money and that the murderer, having paid his fine, may remain at home free among his own people.¹⁶ It is said that one of the scenes depicted on the shield of Achilles was a dispute about a death fine. Among the ancient Germans Tacitus says: "Even homicide is atoned by a certain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state."¹⁷ The fine for homicide is constantly referred to in the laws of Edgar and Athelstan in early England. In Sweden this composition for homicide was called *kinbote*.¹⁸ This same practice of composing difficulties by means of a payment of money is to be found among many primitive peoples.¹⁹

When a member of one group injured a member of another group, then the blood feud lay between the two groups. Here, again, composition was resorted to to settle the matter. Thus in the Dooms of London we find the responsibility of a man's kindred for a thief recognized in the reign of Athelstan, 925-940 A.D.²⁰

3. The Truce of God. In the disturbed period of the Middle Ages when bloodshed was rampant, the church undertook to regulate homicide.

¹⁴ Cheyney, *Reading in English History* (Boston, 1908), pp 81, 82

¹⁵ Henderson, *Select Documents of the Middle Ages* (London, 1903), pp 176-189.

¹⁶ Ninth Book of the *Iliad*.

¹⁷ Tacitus, *Germania*, Chap 21

¹⁸ Kocourek and Wigmore, *Primitive and Ancient Legal Institutions* (Boston, 1915),

p 124

¹⁹ For details see Lowie, *Primitive Society* (New York, 1920), Chap 14

²⁰ See Lee, *Source Book of English History* (New York, 1905), pp 88-91.

The rude barbarians, even though they had been converted to Christianity, were still following the old blood feud resulting in constant warfare. For nearly a half-century before it succeeded in getting the Truce of God accepted, the French church had been endeavoring to curb through its councils the riot and disorder of the barons and princes in that part of Europe. At first as the protector of the poor she decreed a special peace for the unarmed clerk and the industrious husbandman. The Council of Charroux in Poitou first gave utterance to this position in 989. The church obtained the powerful support of William V, of Aquitaine, at the councils of Limoges in 994 and Poitiers in 999. In this early period of development the Truce of God was ineffectual except in affording some protection to churches, priests, and laborers. The effectual establishment of the truce was accomplished by the Council of Tuluges in 1027 in which the regulation was reduced to writing and sanctioned by an oath. According to this regulation all warfare was to be suspended from noon on Saturday until Monday. All monks, clerks, bishops, and churches were to be permanently exempt from ravages by the ruthless barons. Gradually the protection it afforded was extended as to classes of people and the time of the truce was lengthened. Thus in 1041 the church in Aquitania extended the truce to the period from Wednesday evening until Monday morning, from the beginning of the Advent to the Octave of the Epiphany, and from the beginning of Lent to the Octave of Pentecost, and applied it to the feasts of the Holy Cross, the three great feasts of the Virgin, those of the twelve Apostles, and those of a few other saints. From there it spread to surrounding countries, William, Duke of Normandy, adopting it in 1042. Gradually it spread not only over all France, but probably into Germany, Italy, Spain, and England. Special clauses were later added for the protection of pilgrims, women, merchants, monks, and clerks, and also to prevent the robbery of the cattle and agricultural implements of the peasant. In 1095 the Council of Clermont proclaimed the weekly truce for all Christendom and added a clause requiring the oath of obedience to the truce by all men above the age of twelve. The Truce of God reached its height in the twelfth century, when it was sanctioned both by local and by papal councils. In the thirteenth century it began to decline owing to the growth of the power of the king in the various countries which led to the establishment of civil order. There is no question that during this disturbed period the Truce of God played a very important part in limiting the predatory and bloodthirsty instincts of the recently converted barbarians of this part of Europe ²¹

²¹ Article, "Truce of God," *Encyclopædia Britannica*, 9th Edition, Geisler, *Ecclesiastical History* (New York, 1857), II, 200, 201

4. **Control of Crime by the State.** With the growth of a strong civil government these methods of controlling the turbulent elements of society were supplanted gradually by the establishment of civil officials and agencies to deal with the problem of crime. While the kings labored to establish more effective means of punishing crime, they could not be neglectful of the customs which had grown up and become thoroughly established in the habits of the people. Blood feuds would break out occasionally and sometimes defy even the power of a strong king. Gradually civil tribunals took the place of religious agencies and of private and group revenge.

SOCIAL DEFENSE BY EXPIATION

Coördinate with retribution for personal injury is expiation by the eradication of an impious criminal to avert ill luck or the wrath of supernatural beings from the group to which the offender belongs.

Religious Basis of Expiatory Punishment. The rôle of superstition and religion in establishing punishments for crimes which are public in their nature is seen in the period when these acts are believed to constitute a kind of infective influence which menaces the welfare of the group itself. Says Saleilles:

"The infliction of the punishment becomes a sort of religious ceremony. It is solemnized by formalities, sanctioned by law and ritual, imposing one ceremony for the verdict, and another for its execution. An assembly of the tribe is summoned for the imposition of the punishment, thereupon the execution takes place according to established rites after the manner of an expiatory sacrifice. It is in fact a sacrifice offered to the gods of the tribe; the victim is not an enemy to be put to death, but one to be immolated to satisfy the demands of the gods. The tribe does not claim the right to kill for the sake of killing; to appease the vengeance of the gods is the excuse for the immolation."²²

One must not be led to any hasty conclusion that in primitive society private vengeance is the characteristic mode of punishing crime, while in civilized societies crime is a public matter. While injurious acts are divided in modern law into torts and crimes, the former to be prosecuted by the individual injured and the latter by the state itself, the fundamental basis of this division is to be found even in primitive society. *Social defense grew out of this desire to purge the group from the infection of crime which threatened to bring down the wrath of the deity upon all.* Consequently, as Oppenheimer has said, "In primitive communities, the notion of crime blends with

²² Saleilles, *Individualization of Punishment* (Boston, 1913), p 29 Copyright by Little, Brown and Co, 1913 Reprinted by permission)

that of sin."²³ Sin and crime both came to be looked upon as mysterious infectious things which could be transmitted to children by their parents and could be contracted by contact with the guilty. Consequently an act of sin which was likely to contaminate the whole group threatened to destroy its innocent members because it involved the curse of the god upon all who might be infected.²⁴ As an illustration recall the case of Achan, who took of the spoil of war a Babylonian garment, 200 shekels of silver, and a wedge of gold, which he hid in his tent. Upon the confession of his sin, Israel destroyed not only Achan but his children and his possessions.²⁵ Moreover, the primitive conceptions of the purpose of punishment in ancient Israel attach to the graver, longer-recognized crimes. Thus, murder is thought to defile the land. The defilement can be removed only by expiation.²⁶

Philosophic Basis of Expiation. While the desire to justify the group in the eyes of the offended deity explains some of the punishments of primitive man, in the course of time a utilitarian theory was formed, with the result that expiation became an end in itself, i.e., expiation restored the balance of the moral universe disturbed by crime. This did not result, however, until man had philosophized about the matter very much more abstractly and until guilt had become a metaphysical incident of a social conception. Philosophy then completed the process of making expiation an end in itself. Such philosophers as Kohler, Denainstre, Kant, and Hegel put the capstone on this philosophical conception, which originated with the mind of primitive man.²⁷ Thus in the customs and ideas of primitive society we have the basis for the idea which survives to our time: that crime must be expiated by so much punishment.

EVOLUTION OF PUNISHMENTS

That punishments have changed in the course of history is certain. How have they changed since the period in which we catch the first glimpse of man reacting to injury of himself or his fellows?

Retaliation. In the period when man reacted instinctively to injury, punishments were largely in kind, as we have seen. Murder was punished with death at the hands of the avenger of blood. Injury leading to mutilation was punished by a similar mutilation. If the offender could not be

²³ Oppenheimer, *The Rationale of Punishment* (London, 1913), p 188

²⁴ Westermarck, *Origin and Development of the Moral Ideas*, Robertson Smith, *The Religion of the Semites* (London, 1901), p 163

²⁵ Joshua, 7 1-26

²⁶ II Samuel, 21 1-14, 35 33.

²⁷ For an extended discussion of the views of these philosophers see Oppenheimer, *The Rationale of Punishment* (London, 1913), pp 179-200

found, then one of his relatives would serve instead and had to suffer the punishment.

Eradication of Infectious Criminal, His Family and Possessions. When the infection theory of the nature of crime prevailed, the death penalty was universal. The offender and everything belonging to him must be destroyed. Consequently eradication stands first among penalties. It is the oldest form of punishment we have and has persisted down to our own time under all theories of the purpose of punishment. Out of it grew elimination of witches. It formed one of the roots of what later came to be known as capital punishment.

Banishment. Even in early society a common method of getting rid of an offender within a group was to outlaw him. This seems to have taken the place of capital punishment in certain kinds of crimes, chiefly the breaking of tribal customs and the less serious violation of religious taboos. We catch a glimpse of the way in which outlawing a man worked among the ancient Hebrews. The brilliant young warrior David incurred the suspicion of King Saul, who tried to kill him. David fled and betook himself to the rough part of the country and hid in the cave of Adullam. We are told, "And every one that was in distress and every one that was in debt and every one that was discontented gathered themselves unto him; and he became captain over them; and there were with him about four hundred men."²⁸

Under the condition prevailing among primitive peoples outlawry was often equivalent to death. None of the tribe could give the offender shelter or food, and he was in the position of an enemy to all other groups because he was a stranger. Consequently, unless he could find companions he was in danger of perishing either from want or from hostile men.

Poetic Punishments. By this term are designated those punishments which society inflicts upon an offender adapted to the particular crime committed. Thus the thief often had his hand cut off. The false witness either had his tongue torn out or pierced, or in later times he wore around his neck the effigy of a tongue. The crime of rape was often punished by emasculation. In later times the village scold was punished by having a gag put in her mouth. Mutilations of all sorts, such as cutting off the ears, the upper lip, and various members of the body were used to cause the person to be odd-appearing and thus to excite the derision as well as the pity of those about him. A baker who sold short-weight loaves was often punished by having bread tied around his neck, and a fishmonger convicted of selling bad fish was paraded with a collar of decayed smelts hung over his shoulders. In the Middle Ages a heretic who advocated Judaism was fed entirely upon

²⁸ *I Samuel*, 22.2; 25.10

pork. The Baptists of Switzerland were punished by being drowned. Branding with a certain letter was also used as a poetic punishment. This is illustrated in Hawthorne's *Scarlet Letter*. The head of an offending female was sometimes shaved or she was stripped and whipped through the streets. In England after writing became common the thief was branded with a "T" on the forehead.²⁹

These poetic penalties have a psychological basis not altogether different from that out of which grew sympathetic magic. As in the latter it was believed that to perform an act upon an effigy would in some unaccountable way produce the desired effects upon the person represented by the effigy so it was believed that a punishment of a nature allied to the offense committed would cure the offender of his criminal tendencies. This class of punishments has largely disappeared because it has become recognized that they do not have the effect intended. On the contrary they often beget a sense of injustice and so result in further crimes.³⁰

Punishment by Curses, Magic, Incantations, and Formulæ. Primitive peoples have the notion that words carry a certain potency. Names often determine the destinies of the persons who bear them. We evidence the survival of this feeling in refusing to name our children after opprobrious characters in history. No one would think of naming his baby Judas Iscariot, Benedict Arnold, or Jezebel. For a similar reason, early peoples believed that curses carried in some mysterious way their own fulfilment.

Faris tells of a strapping young warrior of the Upper Congo in Africa who had come under the influence of foreign ideas, and who therefore had become indifferent to some of the native taboos and had violated some minor point. When this was called to his attention he was quite unrepentant. One of the oldest women of the tribe, indignant at his action, set off to find him. She followed him to his hut, pouring out upon him a stream of invective. He attempted to evade her by going into the hut, but she crouched at the door still crying out her curses. He retreated into an inner room, but she only raised her voice. Finally he went to the door, hesitated a moment, and then ran off into the forest.³¹

As David fled from Jerusalem for fear of his son, Absalom, who was in revolt against him, Shimei cursed the fleeing king, "and thus said Shimei when he cursed. 'Be gone, be gone, thou man of blood and base fellow; Jehovah hath returned upon thee all of the blood of the house of Saul in

²⁹ Ives, *History of Penal Methods* (London, 1914), pp 54-57

³⁰ See Parmelee, *Criminology* (New York, 1920), pp 364, 365

³¹ Quoted in Kocourek and Wigmore, *Primitive and Ancient Legal Institutions* (Boston, 1915), p 154

whose stead thou hast reigned; and Jehovah hath delivered the kingdom into the hand of Absalom thy son; and behold thou art taken in thine own mischief because thou art a man of blood.’” That David felt the power of this curse is shown by his action when his lieutenant Abishai said to him: “Why should this dead dog curse my lord, the king? Let me go over, I pray thee, and take off his head.” David replied, “Because he curseth and because Jehovah hath said unto him, Curse David; who then shall say Wherefore hast thou done so?”³²

Magical incantations were also used to produce evil results by what has come to be known as sympathetic magic in persons against whom one had a feeling of resentment for injury done. Frazer cites a Malay charm of this sort, “Take parings of nails, hair, eyebrows, spittle, etc. of your intended victim, enough to represent every part of his person, and then make them up into his likeness with wax from a deserted bees’ comb. Scorch the figure slowly by holding it over a lamp every night for seven nights and say: ‘It is not wax that I am scorching; it is the liver, heart and spleen of So-and-so that I scorch.’ After the seventh time burn the figure and your victim will die.”³³ A similar idea seems to be connected with the ordeal provided in the Mosaic law for the trying of a wife accused of unfaithfulness.³⁴

Thus it appears that the practice of punishment by cursing might be a private matter or a public one. The oath is a survival in our penal system of this practice. However, in the case of any offense which was conceived to have a bearing upon the community’s welfare, capital punishment was carried out by group action.

Capital Punishment. This punishment might take any one of many forms. Stoning was a common method among the ancient Hebrews and some other people. Beheading, burning, spearing to death, impaling, throwing from a height, administering poison, and many other methods were employed. In short, authorities have cited over thirty such methods which have been found in use among various peoples.³⁵

Public Ridicule. From primitive societies of all ages up to the present time public ridicule has been a means of punishment. The force of it in primitive societies can be appreciated if one remembers that among the Eskimos it is common for a man who has been injured to call a public meeting at which he recites or sings of the conduct of the offender in such

³² II *Samuel*, 16 5-14

³³ Frazer, *The Golden Bough* (New York, 1922), p. 13.

³⁴ *Numbers*, 5 11-28

³⁵ Wines, *Punishment and Reformation* (New York, 1919), pp. 51-71, Ives, *op. cit.*, Chap. I.

a way as to make him ashamed. The offender may defend himself by reply in kind. The audience judges of the contest by its approval or disapproval.³⁶ This method is employed among other peoples.³⁷ Beccaria urged the limitation of infamy as a punishment in his *Crimes and Punishments*. While this method of punishment has been eliminated from the law it still remains as a method of social control. Beccaria believed that infamy and ridicule should be retained as a punishment for fanatics. In former days it was involved in such punishments as the public pillory, stocks, and hanging. To-day it inevitably attaches to any punishments approved by public sentiment.

Composition for Crime. In the course of time it becomes apparent that private vengeance and group vengeance involve disastrous results and efforts are made by the kindred of the injured and the offender to compose the differences by apology or by the payment of a sum of money. In time the composition of offense is extended even to those acts which are looked upon as public in their nature. These payments then become fines paid to the chieftain, the king, and the leader of the state. The compositions by the individuals become damages for injury, and in the development of law they are relegated to civil processes in a suit for damages, or fines under the criminal process.

QUESTIONS AND EXERCISES

1. In what sense was the *lex talionis*, or "an eye for an eye, a tooth for a tooth, stroke for stroke, burning for burning," a limitation on retaliation?
2. What influences have led us to feel that the *lex talionis* is an outgrown theory of punishment?
3. Point out the social advantages of right of sanctuary, of composition of injury, of the Truce of God. Have we any survivals of these measures?
4. Are punishments more or less numerous in a society composed of different races or nationalities than in a homogeneous society? Why?
5. Why has capital punishment given way to other forms?

³⁶ Goldenweiser, *Early Civilization* (New York, 1922), pp. 39, 40.

³⁷ Lowie, *Primitive Society* (New York, 1920), p. 385. See also Malinowski, *Crime and Custom in Primitive Society* (New York, 1926), Chap. XII.

CHAPTER XIV

CRIMINOLOGICAL AND PENOLOGICAL THEORIES

IN human society action has preceded theorizing. Long before man learned to reflect and to rationalize his conduct he had grown accustomed to certain ways of doing things. That is as true of his treatment of the criminal as of his methods of getting a living or of his relationships to deity. Man's reaction to injury has been impulsive. His theories are the result of reflection upon his experiences with the world of things and men. In the previous chapter we noticed that from the earliest stages of society up to the development of the classical school of penology in the middle of the eighteenth century man had developed certain reactions to injury which were very well settled in custom and law. In the course of his history these had been rationalized in the sense that about them had grown up theories which to his mind gave them social validity.

Purposes of Punishment. It is apparent that in the course of history five theories of the purpose of punishment have developed: (1) retaliation or retribution, (2) expiation, (3) deterrence, (4) reformation, (5) protection of society.

These five theories are not mutually exclusive. Thus, while retaliation, or retribution, was the result of individual or group response to injury, almost instinctive in its nature, an incidental purpose was to deter the offender from repeating the offense. Certainly expiation, deterrence, and reformation, and possibly retaliation, serve also the purpose of protecting society. These purposes grew out of men's conception of the nature of crime and its menace to individual and social welfare. They were conditioned by his ignorance of, and his beliefs about, the nature of himself and the universe. They worked themselves out in his theories of punishment.

Theories of Punishment. Theories of punishment are attempts to rationalize society's procedure with reference to the criminal. The theories, therefore, are affected by current beliefs, philosophies, religious conceptions and contemporary science. If, therefore, we are to understand the penal philosophies which developed in the course of social history, we must examine the question as to how the religious, scientific, and philosophic beliefs of

various ages and peoples affected the theories of punishment. In Western civilization three great influences have molded penal theories: Greek philosophy, Roman jurisprudence, and the Judeo-Christian religion.

PRE-CLASSICAL THEORIES

We have seen how the conceptions of primitive religion affected society's treatment of the sinner and the criminal. We must notice how Judaism's developing moral and religious conceptions brought in the notion of redemption of the sinner. We have next to point out the result on penal philosophy of the amalgamation of Judeo-Christian doctrines with Greek philosophy and Roman legal doctrines when Christianity spread over western Europe.

In the course of the first twelve centuries of Christianity, classical philosophy, Roman law and administrative practice, and Christian doctrine fused. The result was medieval theology, which in the disturbed period called the Middle Ages molded all thought, including law and penology. Earlier alongside the Roman law, canon law was developing. On the decay of the Empire canon law displaced Roman law.

The Secular Theory of Punishment. Resting upon the primitive retaliatory practice and justified by the remarkable cathartic theory of the purpose of punishment discussed above, the penology of Jewish, Grecian, Roman, and Teutonic peoples only developed further the theory of expiation and added to it the purpose of deterrence.

One may see in Aristotle an example of the way in which philosophy took the current notion of expiation and transferred it into a theory of punishment. Book V of his *Nicomachean Ethics* is devoted to a discussion of Justice and Injustice. In Chapter 8 of Book V, Aristotle discusses "corrective justice." In his analysis of the nature of justice, Aristotle carries over into the relations between men his conception of punishment as a means of restoring the balance between pain and pleasure. He says:

"But the Just which arises in transactions between men is fairness in a certain sense, and the Unjust unfair, only not in the way of geometrical proportion but of arithmetical. Because it makes no difference whether a robbery, for instance, is committed by a good man on a bad or by a bad man on a good, nor whether a good or a bad man has committed adultery: the law looks only to the difference created by the injury and treats the men as previously equal, where the one does and the other suffers injury, or the one has done and the other suffered harm. And so this Unjust, being an inequality, the judge endeavors to reduce to equality again, because really when the one party has been wounded and the other has struck him, or the one kills and the other dies, the suffering and the doing are divided into unequal shares, well, the judge tries to restore equality by penalty, thereby taking from the gain."

"For these terms *gain* and *loss* are applied to these cases, though perhaps the term in some particular instance may not be strictly proper, as gain, for instance, to the man who has given a blow, and loss to him who has received it: still, when the suffering has been estimated, the one is called loss and the other gain

"And so the equal is a mean between the more and the less, which represent gain and loss in contrary ways (I mean, that the more of good and the less of evil is gain, the less of good and the more of evil is loss). between which the equal was stated to be a mean, which equal we say is Just. and so the Corrective Just must be the mean between loss and gain "

Thus, corrective justice to Aristotle is the means whereby the loss suffered by the wronged man is compensated. Suffering by the offender restores the balance between injured and transgressor.

But Aristotle sees clearly that retaliation for injury does not in all cases restore this balance. He says:

"There are people who have a notion that Reciprocation (or Retaliation) is simply just, as the Pythagoreans said for they defined the Just simply and without qualification as 'That which reciprocates with another' (i.e., an eye for an eye). But this simple Reciprocation will not fit on either to the Distributive Just, or the Corrective (and yet this is the interpretation they put on the Rhadamanthian rule of Just:

'If a man should suffer what he hath done, then there
would be straightforward justice'),

for in many cases differences arise as, for instance, suppose one in authority has struck a man, he is not to be struck in turn; or if a man has struck one in authority he must not only be struck but punished also. And again, the voluntariness or involuntariness of actions makes a great difference.

"But in dealings of exchange such a principle of Justice as this Reciprocation forms the bond of union, but then it must be Reciprocation according to proportion and not exactly equality, because by proportionate reciprocity of action the social community is held together. For either Reciprocation of evil is meant, and if this be not allowed it is thought to be a servile condition of things: or else Reciprocation of good, and if this is not effected then there is no admission to participation (i.e., of service) which is the very bond of their union" ¹

It is clear, then, that Aristotle has attempted to rationalize the practice of his day in terms of expiation, admitting, however, the modifications necessary by reason of the different social status of offender and injured, or because in one case injury is intentional and in the other unintentional, or in view of the changed social relations brought about by a good deed done

¹ Aristotle, *Nicomachean Ethics*, pp 137-138.

to another. In all his discussion there appears the generalization that upon men's relations one to another depend the unity and stability of society. The only modifications made in the expiation theory up to this time were certain limitations upon private and group vengeance to prevent disastrous social results. For example: the old law of an eye for an eye, a tooth for a tooth, limb for limb, and burning for burning, was a limitation intended to assure that the wronged should not wreak vengeance greater than the injury he had suffered. Again, the right of sanctuary, while it gave time to deliberate whether the injury was intentional or unintentional, did not do away with the theory of expiation or of retribution. If, after deliberation, it was found that the injury was intended, then the priest stood out of the way and permitted the avenger of blood to execute the penalty.

Nevertheless, these and other methods unquestionably tended to shift the problem of punishment from the merely objective question as to what the offender had done to the subjective one of his intent. If he had committed the crime unintentionally, the beginning of an attempt to individualize his punishment was made by right of sanctuary and a money composition for the crime. This modification of the original objective basis of punishment did not, however, take into account the personality of the offender. There was no question in the appraisal of the offense as to its moral quality, nor was there any attempt to individualize the treatment in our sense of that term. Moreover, in this early period no account is taken of what came to be known in neo-classical theory as "extenuating circumstances."² Furthermore, before the influence of Christianity was felt in the development of the theory of punishment, there was probably no question of responsibility based upon the freedom of the will, the social purposes of expiation and deterrence provided the theoretical justification.³

The Judeo-Christian Theory of Punishment. How did the theory of reformation originate? It grew out of a religious root.

While we must suppose that the expiation theory continued in force among the Jews down at least to the Christian era, we have evidence that in the eighth century B C certain new elements were entering into the theory of punishment for sin. For example, Amos seemingly has changed from the expiatory to the ethical and social basis of punishment for recreant Israel. The sins for which Israel is to be punished are not unfaithfulness in the matter of sacrifices and religious ceremony but greed, selfishness, injustice to one another, and disregard of the bonds of fellowship. His God is a God of *social* righteousness, punishing those guilty of *social* injustice. Apparently

² Saleilles. *The Individualization of Punishment* (Boston, 1913), p. 31.

³ *Ibid.*, p. 35.

the only purpose of punishment was to destroy the evil-doer. Amos saw no prospect of pardon, only destruction: "Thus saith the Lord, behold I am setting a plumbline in the midst of my people Israel, I will not again pardon them any more, and the high places of Israel shall be desolate and the sanctuaries of Israel shall be laid waste; and I will rise against the house of Jeroboam with the sword."⁴

The younger contemporary of Amos, however, introduces a new note. Finding in his own experience with his unfaithful wife a revelation of the will of God against unfaithful Israel, Hosea conceived of the wrath of God against Israel not only in terms of moral indignation, as did Amos, but found in his own love for his faithless spouse, in spite of her sins, the suggestion that God so loved Israel that He could not utterly destroy her, as Amos believed. He would punish her and through punishment purify her and redeem her unto Himself. *Here the redemptive purpose of punishment appears for the first time in ancient Israel.*⁵ The theory of the purpose of punishment thus introduced into human thought found a confirmation in the experience of Israel during the awful period of exile in Babylonia following the destruction of the Southern Kingdom in 586 B.C.⁶ This theory of the purpose of punishment was taken over by Jesus and at his hands received a fresh emphasis. In spite of the fact that historic Christianity carried over from Judaism and Paganism the theory of expiation, the stress Christianity laid upon the forgiving love of God toward sinners and upon forgiveness of fellow-men meant that in the Christian church punishment for sin was redemptive in purpose. What else does the sacrament of penance mean? How otherwise explain the confessional, the threat of excommunication, and the original (not the Spanish) inquisition? The purpose of all these devices of the church was to reform men.

Relation of the Christian Doctrine of Penance to Penology. The story of the amalgamation of secular and ecclesiastical speculation on the purposes of punishment cannot be traced in detail. It will serve our purpose

⁴ Amos, 7:7-9

⁵ Hosea, 1:2-8, 11:8 ff

⁶ Romans, 8:28-30, 11:1-5 While the religious thinkers did not go to the length of saying that through punishment every individual in the nation would be saved, or that the nation would be redeemed by the sufferings entailed upon it for its sin, they did hold firmly the belief that for a *remnant* of the nation punishment would effect reformation and for selected individuals punishment would secure repentance and salvation. Thus we have the doctrine of "a saving remnant," introduced long before his time by the second Isaiah, fitted to the theory of individual responsibility by St Paul. By this theory he explained to his own mind the refusal of the Jewish people as a whole to accept Christianity and yet was able to hold to the theory of individual responsibility in spite of his doctrine of election

to notice the fusion of the Christian doctrine of *punishment for sin* with the secular theory of *punishment for crime*. While both originate in a combination of man's natural reaction to injury with the theories resulting from reflection upon his experiences, in their respective histories each had been influenced by certain quite different factors. The Christian doctrine of punishment for sin in its early history had had to face the difficult problem of legal administration in a civil state. Moreover, some of its sanctions were supernatural rather than civil. It could leave at least a part of the punishment of the sinner to God either here or in the hereafter. And, again, its doctrine of sin was accompanied, thanks to its great religious authors, by a most humanitarian doctrine of redemption. The last gave a new quality to its theory of punishment. On the other hand, the secular theory of punishment for crime had only social sanctions to be applied here and now; in the interest of social order punishment could not be postponed to the hereafter. Until it came under the influence of Christian teachings the secular theory, derived from primitive usage and thought, was untempered by any such revolutionary conception as that of reformation.

Individual Responsibility, Redemption and Reformation of the Offender. The introduction of the idea of individual responsibility for sin and the redemptive purpose of punishment, as previously described, brought into the theory of punishment, as Christianity spread out into the Roman Empire, the possibility of a *subjective attitude* toward crime and the criminal. If punishment could be adapted to reform the offender, then it had the purpose not only of expiation and deterrence but also of reformation. Since, however, the doctrine of reformation of the sinner was contributed by the church to secular penology, certain other concepts closely connected with those of sin and redemption were carried over with the concept of reformation. Two such concepts were (1) that of the free will of the individual in determining his conduct and hence (2) the individual responsibility of the criminal for his acts. A third concept common to theology and to secular penology was that of intent. The carrying-over of these theories into penology created difficulty when the reformatory theory came to be applied. While the church retained its power for purposes of ecclesiastical control to punish sins here and now when the purpose was made clear either by confession or by circumstantial evidence, it never undertook to relieve the Almighty of His responsibility for punishment in the hereafter. But after the theologians developed the doctrine of free will and responsibility with reference to sin, it was natural that in the disturbed period when the church took over many of the duties of the demoralized Empire

the concepts of free will and of responsibility should pass over to the secular theory of punishment for crime.

But it must not be forgotten that Christianity carried with it from Judaism something of the old theory of expiation. While the theory was never clearly thought out, it was a part of the common Christian tradition, evidenced by many passages in the New Testament, that Christ died for man, that He gave His life a ransom for many, and that somehow this vicarious punishment was in a sense redemptive. Augustine laid the foundation for a clearer view of the significance of Christ's death for mankind by emphasizing the gravity of sin. Anselm worked out the theory, still extant, in his doctrines that the death of Christ was a satisfaction to the dignity of God injured by man's sin,⁷ in part a reversion to the infection theory of sin and of crime.

Moreover, running parallel in pagan society was the theory of the expiatory nature of punishment already alluded to. When Christianity was accepted by a large part of the people of western Europe, it found them already in possession of similar conceptions. As the result of the coalescence of Christian and pagan theory, scholastic theology and the practice of the ecclesiastical courts in the course of twelve centuries produced a modification of the old Roman theory of punishment which enables us to understand how the classical theory of punishment came into being.

Rise of the Canonical Courts. From the beginning the Christians held that they were a society distinct and separate from the state. In the Scriptures of the New Testament the church fathers found warrant for the church's trying a certain type of case and for settling difficulties among its members.⁸ One of the early Christian writings, coming from the first part of the second century, the *Didache*, forbids communion to any one who has an unadjusted difficulty with a fellow-Christian.⁹ As early as the fourth century, as shown by the so-called *Apostolic Constitutions*, the church had a very carefully arranged system of trial and punishment for Christians.¹⁰ In this interesting document the groundwork of canonical courts is already well laid. The church is to try its own people in case of dispute with brethren:

⁷ Harnack, *History of Dogma* (Boston, 1899), VI, 54-59. See also Anselm, *Cur deus Homo* (Open Court Publishing Co., Chicago, 1903), p. 203, where he says "Let us return and consider whether it were proper for God to put away sins by compassion alone without any payment of the honor taken from Him . . . To remit sin in this manner is nothing else than not to punish, and since it is not right to cancel sin without compensation or punishment; if it be not punished then it is passed by undischarged."

⁸ I *Corinthians*, 6.1-3

⁹ *Didache*, 14 2, 15 3

¹⁰ "Apostolic Constitutions," II.44-51, in *Ante-Nicene Fathers* (New York, 1899), VIII, 416-419

"Nay, indeed, you are not to permit that the rulers of this world should pass sentence against your people. . . . Let not the heathen therefore know of your differences among one another, nor do you receive unbelievers as witnesses against yourselves, nor be judged by them. . . . Let also the deacons and presbyters be present at your judicatures, to judge without acceptance of persons, as men of God, with righteousness. When, therefore, both the parties are come, according as the law says, those that have the controversy shall stand severally in the middle of the court; and when you have heard them, give your votes holily, endeavoring to make them both friends before the sentence of the bishop, that judgment against the offender may not go abroad into the world." Moreover, the provision is made that the presbyters and deacons shall act as investigating officials to get all the facts possible before the trial so as to assist the judge to arrive at a fair judgment, much in the fashion of modern probation officers. In this procedure there was a rather interesting provision for the individualization of the punishment.¹¹

As the church obtained standing in the Empire, her courts won the right to have their decisions enforced by the secular authorities and the clergy could not be tried by the state courts, at least until they had been tried by the courts of the church. Furthermore, the ecclesiastics early began to interfere with the secular courts in cases where the latter had condemned a man to death.¹² Augustine of Hippo in 412, nearly a hundred years after the conversion of the Emperor Constantine, face to face with the threatened execution of certain Donatists who had murdered members of his own party, pleaded for their lives. In writing to Marcellinus, the official who had charge of the trial and punishment of these criminals, after saying that he had heard that they had confessed their deeds, Augustine remarks, "This news has plunged me into the deepest anxiety, lest perchance your Excellency should judge them worthy, according to the laws, of punishment not less severe than suffering in their own persons the same injuries as they have inflicted on others. Wherefore I write this letter to implore you by your faith in Christ, and by the mercy of Christ the Lord himself, by no means to do this or permit it to be done. . . . Not, of course, that we object to the removal from these wicked men of the liberty to perpetrate further crimes; but our desire is rather that justice be satisfied without the taking of their lives or the maiming of their bodies in any part, and that, by such coercive measures as may be in accordance with the laws, they may be turned from their insane frenzy to the quietness of men of sound judgment, or compelled to give up

¹¹ See *ibid*, II 48

¹² Ambrose, *De officiis* II 29

their mischievous violence and betake themselves to some useful labour. This is, indeed, called a penal sentence; but who does not see that when a restraint is put upon the boldness of savage violence, and the remedies fitted to produce repentance are not withdrawn, this discipline should be called a benefit rather than a vindictive punishment?"¹³ Gradually the canonical courts took over jurisdiction, not only of such matters as were essentially ecclesiastical in their nature, e.g., faith and church discipline, but also marriage, sex crimes, inheritance, and usury. The church also came to claim the administration of oaths. Thus, as the civil organization of Rome weakened, the church took over increasingly her functions in the trial and punishment of criminals, especially offenders against those laws and customs which had a moral or ecclesiastical bearing. In this way there grew up, alongside the secular courts, the canonical courts, with a spirit and a procedure informed with the genius of Christianity.

Origin of the Doctrine of Responsibility in Penology. Primitive penal law had not developed the theory of moral sin. Hence, a doctrine of individual responsibility in the modern sense was alien to its spirit. The doctrine of individual responsibility for an act condemned by society was produced by religion. Among the Hebrews it was not voiced in their extant literature before the time of Jeremiah. It became a part of the moral tradition taken over from the Jews by Christianity. Through the ecclesiastical courts it was introduced into penal law in the Middle Ages.¹⁴

The Rise of Individualization of Punishment. Through the canonical courts was introduced the theory of the individualization of punishment by the judge. Yet it must not be forgotten that along with a humanitarian attitude toward the criminal there existed a clear conception that the purpose of criminal law and of its administration by the judges was to deter others from crime and thus secure the safety of society. The lawmakers and the judges had the practical task of making and administering law not only in the light of such theories of free will and responsibility as were regnant in society at any given time, but also face to face with the indignation of the community at a particular offense. While it was believed that the punishment of an offense should be imposed according to whether the offender committed the crime of his own free will and accord, in actual practice this could not be determined, at that time, on the basis of present-day psychology but had to be determined on the basis of the circumstances under which the

¹³ See "Epistles," 133, 139, *Nicene and Post-Nicene Fathers*, First Series (New York, 1902), I, 470, 489.

¹⁴ Saleilles, *The Individualization of Punishment* (Boston, 1913), pp. 34-39.

crime was committed. The judges had no other criteria than such circumstances by which to judge of free volition and responsibility.

The Abuse of Judicial Individualization. In addition we must remember that before the rise of Classical penology the law, while it did attempt to determine the comparative seriousness of such crimes as murder and theft, left to the judges the infliction of "discretionary penalties," in order that the judge might do what the law could not do, viz., differentiate between the heinousness of acts in the eyes of the community, as determined by the objective circumstances of the case. For example, while the law in general considered murder more serious than theft, yet in a given case the judge might consider the robbery of a widow as deserving more severe punishment than an accidental homicide. Hence, the judge had the power to add to the punishment prescribed by law additional penalties in view of the circumstances. This practice put into his hands the power to punish tyrannically. The judges could make their position serve their own grudges or the violence of one class against a member of another class. In actual practice this theory gave them such tyrannical power and led to such abuses that the Classical School arose in protest.¹⁵

THE CLASSICAL SCHOOL OF PENOLOGY

The Classical School was the *direct outgrowth of two influences*: (1) protest against the abuses of the discriminatory power of the judges which had been devised to assist in applying the criteria of responsibility provided by the combination of secular and ecclesiastical theory, (2) the influence of the philosophical school of Rousseau and his social contract theory. Its most outstanding representatives were Beccaria in Italy, Bentham in England, and Feuerbach in Germany. In other words, it was an outgrowth of the general intellectual development of the eighteenth century in much the same way as the political theories which gave rise to the French and American revolutions.

The purpose of the Classical penologists was to limit the arbitrary power of the judges and to mitigate the harsh and extreme punishments which had grown out of medieval theory and practice. Under that theory it had been possible for judges to wreak personal vengeance on enemies for the slightest transgression. The law set only a minimum penalty, giving the judge the power to add to the penalties prescribed in order to adapt the punishment to the responsibility of each individual criminal.¹⁶

The rise of the Classical School is most closely associated with the Italian,

¹⁵ Saleilles, *op. cit.*, pp 45-51.

¹⁶ *Ibid.*, pp 51-58

Beccaria His book *Crimes and Punishments*, published in 1764, is usually considered the foundation stone of this doctrine of punishment. This is not because Beccaria gave utterance to an altogether new theory, but because he applied the new political philosophy of that day to the subject of crimes and punishments in a searching critique and his book at once attracted wide attention, as is shown by the fact that in a few years it was translated into many languages.¹⁷ Born at Milan, Italy, in 1735, and educated at the Jesuit College at Parma, Beccaria showed great ability in mathematics. He soon came under the influence of the writings of Montesquieu and thereafter became interested in the problems of politics and economics, or what once was known as "national economy." For twenty-five years he was a member of the highest magistracy, during which time he published for the Austrian government a number of studies on economic and political questions. He was an intimate friend of the Italian economists, the Verris. Two years after the publication of his book, the Austrian government founded for him a chair of political economy in Milan. While his contributions to economics are of interest chiefly to economists, his book on penology is the work with which his name is most widely associated.

In this book Beccaria shows that he had absorbed the political philosophy of the eighteenth century. He starts out with a brief exposition of the social contract theory of Rousseau. It comes out in the opening sentence of his essay. He says, "Laws are the conditions under which men, naturally independent, united themselves in society. Weary of living in a continued state of war, and of enjoying a liberty which became of little value from the uncertainty of its duration, they sacrificed one part of it to enjoy the rest in peace and security."¹⁸ This theory he has applied to the problem of crime and its punishment. He says, "If we look into history we shall find that laws, which are, or ought to be, conventions between men in a state of freedom, have been, for the most part, the work of the passions of a few or the consequences of a fortuitous or temporary necessity; not dictated by a cool examiner of human nature, who knew how to collect in one point the actions of a multitude and had this only end in view, the *greatest* happiness of the *greatest* number."¹⁹

Reading this little book we realize that it is essentially a protest against the abuses which had arisen in a despotic and autocratic society, callous to the sufferings brought about by its laws. His words are motivated by a

¹⁷ *Encyclopaedia Britannica*, 9th Edition, Article "Beccaria"; Palgrave, *Dictionary of Political Economy*, Article "Beccaria"

¹⁸ Beccaria, *Crimes and Punishment* (New York, 1809), p. 15

¹⁹ *Ibid.*, Preface.

passion for human equality and liberty. Speaking of the diffusion of the knowledge of philosophic truths by which the relations between sovereigns and their subjects are discovered, he says, "By this knowledge commerce is animated, and there has sprung up a spirit of emulation and industry, worthy of rational beings. These are the produce of this enlightened age; but the cruelty of punishments, and the irregularity of proceeding in criminal cases, so principal a part of the legislation and so much neglected throughout Europe, have hardly ever been called in question. Errors accumulated through many centuries have never yet been exposed by ascending to general principles; nor has the force of acknowledged truths been ever opposed to the unbounded licentiousness of ill-directed power, which has continually produced so many authorized examples of the most unfeeling barbarity. Surely, the groans of the weak, sacrificed to the cruel ignorance and indolence of the powerful, the barbarous torments lavished, and multiplied with useless severity, for crimes either not proved, or in their nature impossible, the filth and horrors of a prison, increased by the most cruel tormentor of the miserable, uncertainty, ought to have aroused the attention of those whose business is to direct the opinions of mankind."²⁰ Acknowledging his debt to Montesquieu for the inspiration of his work, he confesses that he has developed the subject which his master only touched. However, he distinctly says that he shares the same reaction to injustice which animated Montesquieu when he writes, "I shall be happy if, with him, I can obtain the secret thanks of the obscure and peaceful disciples of reason and philosophy and excite that tender emotion in which sensible minds sympathize with him who pleads the cause of humanity."²¹ Only as such a protest, and not as the program of a contemplated new school of punishment, can Beccaria's book be understood. That it did turn human thought on the subject of punishment for crime into new channels was an event which perhaps would have surprised the author himself more than it does the reader. This book was the inspiration of what came to be called the Classical School of penology. Beccaria died four years after his ideas, worked out in great detail by legislators, were enacted in the French code of 1791.

In detail his protest was against (1) the arbitrary penalties of judges, added by them to statutory punishments in their endeavors to interpret the spirit of the law; (2) the obscurity and hence the uncertainty of the law; (3) the current methods of admitting the testimony of witnesses whose credibility was open to suspicion, and the kind of evidence admitted, (4)

²⁰ *Ibid*, p. 13.

²¹ *Ibid*, p. 13.

secret accusations; (5) torture; (6) the administration of oaths to the accused in the endeavor to make him incriminate himself; (7) the length of confinement often visited upon the accused before trial and punishment; (8) the abuse of power by the rich against the poor and humble in the punishment of crime; (9) the severity and cruelty in the punishment of crimes against property, such as robbery; (10) the too frequent punishment of infamy for trifling crimes, (11) the too frequent use of banishment and confiscation of estate with the consequent suffering of an innocent family; (12) capital punishment, (13) the perversion of justice in the interest of the friends of the judges and to the detriment of those who had no friends at court; (14) the severe punishment of crimes difficult of proof, such as suicide, adultery, sodomy, smuggling, and bankruptcy, or punishment which did not serve the purpose of punishment; and (15) the abuse of the pardoning power. In all these cases his protest was inspired by the desire to make all men equal before the law.

On the constructive side Beccaria made a number of suggestions which represented a real *reformation of the machinery of justice* in accordance with his political opinions already referred to. Thus, he urged that (1) legislators, not judges, should make the laws; (2) the duty of judges is solely to determine whether a crime as defined by the legislators has been committed and to pronounce the sentence determined by the law; (3) the laws should be clear, providing a scale of crimes from the most dangerous to society to the least serious, so that each man will know just what punishment to expect if he commits a certain act; (4) the same punishment should be visited upon every man who commits a given act, no matter what his status in society; (5) the purpose of punishment is to make sure that the guilty do not repeat the crime and that others are deterred by the punishment of the guilty from committing crime; (6) this purpose is secured by the certainty and promptitude rather than by the severity of the punishment; (7) the state should address itself to devising means for the prevention of crime, by (a) making the laws clear and simple, (b) getting "the entire force of the nation united in their defense," (c) having "them intended rather to favour every individual than any particular class of men," and (d) by having "the laws feared, and the laws only", and (8) the punishment should be public. He sums up his conclusion as follows: "That a punishment may not be an act of violence, of one, or many, against a private member of society, it should be public, immediate and necessary, the least possible in the case given, proportioned to the crime, and determined by the laws."²²

In much of what he says there is value for our day. The strange thing

²² *Ibid*, pp. 127, 136

is that only a part of his ideas were adopted by the so-called Classical penology. Take the French code of 1791 as an example of the Classical penology. It attempted to apply Beccaria's principle of "equal punishment for the same crime." It adopted his suggestions that crimes should be arranged in a scale, that to each crime the law should affix a penalty, and that the legislators should make the law, while the judges should only apply it to the cases which came before them for trial. On the other hand, it failed to adopt methods whereby the injustice inherent in the application of "equal punishment for the same crime" should be prevented. While in that dictum Beccaria had in mind the abuse of arbitrary punishments by the judges and the favoritism shown the powerful by the courts, in actual practice in the French courts it was extended to accused persons who were unequal in another sense—the insane and the sane, the minor and the adult, the idiot and the person of normal intellect. In this code there was an attempt not only to legislate on every crime, but to fix by statute the penalty for each degree of each kind. Nothing was left to the judgment of the court, except the question of guilt. There could be no abatement for extenuating circumstances, no added penalty for the heinousness of the way in which a particular crime was committed. The punishments were as absolutely fixed as they had been in the Salic Law more than a thousand years before, although they were not quite on the same basis.

In short, the Classical penology was a curious combination of the ideas of Beccaria with the fundamental medieval philosophy. It assumed with the current philosophy, which was not attacked by Beccaria, that (1) man is a free moral agent, and that every act of any man is of his own free will and accord; and that (2) every man is therefore responsible for his acts. It differed from Beccaria in that it retained from the former penology the theory that (3) crime can be expiated only by punishment. It adopted the principle of Beccaria that (4) the law, not the judge, should determine the punishment to be attached to a certain act and provided a scale of punishments to be applied equally to all persons committing the same crime.

It differed from the preceding theory in that it destroyed the arbitrary power of the judges to add to the punishments prescribed by the law additional punishments for extreme cases. The whole function of the judge was to determine whether the man was guilty of a certain crime and to pronounce the sentence provided in the law for that particular crime. That made necessary a very extensive code, since the law must provide not only for every crime which man might commit, but for all the varying degrees of that single offense. It should be noticed, however, that it did not provide for extenuating circumstances as did the later Neo-Classical theory.

The Classical theory had *certain advantages and difficulties*. Among the advantages were:

(1) It was easy to administer; the judge was only the instrument to apply the law.

(2) It eliminated arbitrary sentences such as had been possible under the pre-Classical theory and procedure.

Among the difficulties were:

(1) It was unfair in that it treated all men as mere digits without reference to the differences in their individual natures or the circumstances under which they committed the crime.

(2) It introduced the rankest injustices, since it subjected to the same punishment—often resulting in their intermingling during punishment—the first offender and the hardened criminal, the accidental and the habitual criminal.

(3) In actual practice its theory of equal punishment for the same crime was a farce, because it provided the same punishment for a given crime no matter whether committed by a repeater or a first offender, by one to whom imprisonment was a crucifixion or another to whom it was a refuge.

(4) As Liszt has said, it was the *magna charta* of the professional criminal, because he knew exactly what risks he had to run and could determine with cool calculation beforehand whether the risk was worth while.

(5) It considered only the injury inflicted by the criminal, not the state of mind and the nature of the criminal.

(6) It proceeded upon abstractions and ideals, while in practice penal law must deal with concrete realities. As Saleilles says. "The theory is noticeably false, inhuman, and supremely unjust but obviously simple and easy to apply."²³

As a matter of history the Classicists themselves found that the attempt to administer the French code of 1791 was an impossible task. Hence, in the code of 1810 the attempt to define all grades of crime and name a punishment for each was given up. Crimes were defined and classified, but in each class a maximum and a minimum punishment were named, while the determination of which should be applied in a particular case was left to the court. This was in a sense a recession from the position of Beccaria but was in the interests of justice.

THE NEO-CLASSICAL SCHOOL

In the revised code of 1810, while the essential principles of the Classical School remained intact, the system of defined and invariable punishments was modified. The judge was given discretion to vary the punishments between

²³ Saleilles, *op. cit.*, p. 60

the maximum and the minimum fixed by the law. In doing this, however, the judge was not permitted to take into account the subjective circumstances, since in the Classical theory these circumstances have nothing to do with responsibility. The only variable factors, therefore, to be taken into account by the judge were those outward conditions which affect responsibility, namely, the material circumstances of the act. This revised Classical code of 1810 did not admit extenuating circumstances for crime. The judge was not permitted to substitute one kind of punishment for another. If, for example, the law said that for a certain act the punishment should be penal servitude, say from five to twenty years, he was not at liberty to substitute solitary confinement. Moreover, for murder, whatever the circumstances, the penalty was penal servitude for life. Since no extenuating circumstances could be considered, therefore all murderers, no matter what the circumstances, were given life sentences. In other words, both the code of 1791 and that of 1810 took into account only the kind of crime committed and the injury that particular kind of crime did to society. No matter if the man was insane at the moment he committed the crime or if he was an idiot or a minor, the punishment was based upon the act committed and the judgment of the legislators as to the injury of that act to society.²⁴

The endeavor to put this theory into practice showed its lack of contact with the realities of life. As a consequence there began to arise suggestions for change. In the course of time the suggestions made materially modified in actual practice this theory and gave rise to what has come to be known as the Neo-Classical School, represented by Rossi, Garraud, and Joly. Like the Classical School it is based upon the theory of responsibility, and responsibility rests upon the theory of freedom. The results of practice in the courts, however, soon showed that the assumption of free will in all cases made by the Classical School was untenable. Thus the Classical theories came in conflict with public sentiment, and modern science, which developed in the middle of the nineteenth century, seemed to be in conflict with the Classical findings. Common observation shows that not every one is free; that some who commit crime claim our sympathy and some excite our hostility. Consequently the popular sense of justice refused to accept without protest the punishments visited under this system upon those who by reason of insanity, childhood, or a justifiable passion were incapable of exercising free will.

Also scientists, philosophers, physicians, and jurists who became acquainted with the findings of biology concerning heredity, of pathology, and of psychiatry refused to believe that every one was free to choose, in the moment when he committed a crime, one course or another. *So the new*

²⁴ Saleilles, *op. cit.*, pp. 56-61

school recognizes extenuating circumstances in the criminal himself which must be taken into account in punishing him. This school admits that minors are incapable of crime because they have not reached the age of responsibility. Moreover, certain adults are incapable of crime because in their condition they are not free to choose. Those who are insane or imbecile at the moment of committing crime are held to be irresponsible and therefore incapable or only partially capable of committing a crime. However, in the early days of this school, as the theory was actually worked out in the criminal codes, and as it still remains in the practice of most of our criminal courts, it must be shown by the defense that at the moment of committing the act this person was incapable of choosing and therefore irresponsible. Insanity antecedent to the act is no proof to the jury that he was insane at the time he committed the crime.

This position made room for the medical expert, but the theories of free will and responsibility made it next to impossible for the medical man to give merely his expert opinion. In actual practice it led to the introduction of the *hypothetical question*. This question recites the facts brought out in the testimony concerning the past of the person which may show that he was insane or an imbecile before the act was committed but puts to the medical or psychiatric expert the question as to whether he believes that, in view of all these facts, the person on trial, at the time he committed the act, was capable of choosing between right and wrong and therefore responsible. In actual practice it makes the expert answer a metaphysical question rather than a scientific one. The expert may or may not believe in free will, but he is asked a question based upon the assumption of free will. He may believe that the man is suffering from a form of mental derangement in spite of which he is capable of reasoning, but which nevertheless incites him to deeds which he believes are right. Such an opinion, however, may not be offered to the court. The only thing on which he is allowed to give his opinion to the jury is as to the question of responsibility.²⁵

According to the Neo-Classical School, therefore, the basis for the mitigation of punishment is the establishment of irresponsibility or partial responsibility by reason of insanity, imbecility, or any other condition in the individual which made it impossible for him to exercise free will. Everywhere the adherents of this theory cling to the idea that punishment must rest upon the degree of responsibility of the one who commits a criminal act. In some

²⁵ For an illustration of a hypothetical question which reveals the impossibility of arriving at approximate justice under the theory of freedom of the will and responsibility held by the Neo-Classical School, see Goddard, *The Criminal Imbecile* (New York, 1915), p. 109.

states the condition of mind which makes it impossible for the individual to choose between right and wrong is admitted in evidence and also some such permanent conditions which prevent free will as degeneracy, neurasthenia, etc., may be admitted. In addition, this school allows the admission of evidence of external circumstances connected with the act on which mitigation of punishment may be based. The Neo-Classical theory is to-day accepted practically everywhere.

What are the results of the Neo-Classical theory in actual practice?

1. It exempts from punishment, when it is established that freedom of the will is absent or is interfered with by conditions in the criminal which made it impossible for him to exercise free will

2. Punishment may be correspondingly reduced when there is only partial freedom of the will and therefore only partial responsibility.

3. It admits, as did the Classical School, that punishment should be mitigated if the circumstances of the act showed lack of full responsibility.

4. It represents a reaction against the severity of the Classical theory of equal punishment for the same act regardless of the subjective condition of the criminal.

5. Being based upon the theory of freedom of the will and responsibility, it introduces an impossible basis for the action of judges, juries, and experts

6. It does attempt to introduce consideration of the conditions under which the individual committed an act and thus permits to a degree the adaptation of the punishment to the criminal. In so doing the theory introduces the subjective attitude hitherto found only in the ecclesiastical courts

7. As a makeshift it introduces the question of premeditation as a measure of freedom of the will

8. Since culpability rests, according to this theory, on freedom of the will, the first offender who hesitates and can choose deserves the heavier punishment, whereas the hardened offender, less likely to hesitate by reason of his habits, should escape with less punishment. This outcome, of course, is absurd.

9. In actual practice it has been found that, with judges and juries, not the question of responsibility based upon freedom of the will but the actual menace of the act to society is taken into consideration. According to this view criminals are irresponsible but nevertheless must be punished because they are dangerous to society. Out of this view arises the theory of social responsibility for crime. Whether irresponsible or responsible, the criminal is a menace to society and therefore should be punished. But since social conditions produce the criminal attitude should he therefore be acquitted? "No," says Saleilles, "for society must be protected." Thus with the theory of limited responsibility the Neo-Classical School is involved in difficulties. One difficulty is that in practice it finds it hard to apply its principles to specific situations. Another is that it is based upon a scientific error. Responsibility is a conception of social origin, but the Neo-Classical theory converts it into an abstract and metaphysical notion without any

corresponding reality. What we must have is a conception of responsibility as it is currently accepted by the average man, since it is the jury which acquits or convicts. Every application of the theory of responsibility which runs counter to common opinion is a scientific mistake. Juries will not act consistently on any abstract theory but in view of the circumstances in each case. They will not often take into account mental defect but will treat the man as one of like feelings and motives with themselves. Because of these difficulties involved in the theory of freedom held by the Neo-Classical School arise the inconsistent decisions of juries. This theory makes impossible a uniform standard of judgment as to freedom and responsibility.

QUESTIONS AND EXERCISES

1. Name the chief purposes of punishment.
2. State Aristotle's theory of corrective justice. To which purpose of punishment is it related?
3. What influence did Judaism have on the theory of individual responsibility?
4. Explain how penology got its theory of reformation.
5. What was the theory of "discretionary punishments" characteristic of pre-Classical penology? What evils grew out of it?
6. What were the main points in the Classical theory of punishment as set forth by Beccaria?
7. What changes were introduced in theory by the Neo-Classicalists?
8. What is meant by *hypothetical question*? See Goddard, *The Criminal Imbecile* (New York, 1915), Appendix A
9. Why is the hypothetical question necessary under the Neo-Classical system?
10. What is the function of the alienist "expert" in a criminal trial under the Neo-Classical system?

CHAPTER XV

CRIMINOLOGICAL AND PENOLOGICAL THEORIES (Continued)

THE ITALIAN SCHOOL

LOMBROSO. A little more than a hundred years after the appearance of Beccaria's *Crimes and Punishments* a small pamphlet entitled *The Criminal in Relation to Anthropology, Jurisprudence, and Psychiatry* was published by Lombroso, another Italian. Out of this pamphlet and subsequent publications by Lombroso and a number of other Italians there developed a school of criminology and penology attacking the positions of the Classical and Neo-Classical schools much as Beccaria had attacked the practices and theories of penology in his day. Born in 1836, of a Jewish family, Lombroso was educated for medicine. He finally specialized in psychiatry and became attached to an institution for the insane where he made clinical examinations of those who died in the institution. Previous to that as an army doctor he had used his leisure time by making a series of studies of the Italian soldier. In these examinations he states that he was struck by the fact that the vicious soldier was distinguished from the honest soldier by the extent to which the former was tattooed and by the indecency of the designs. In 1866 he had begun the study of psychiatry and to the disgust of his colleagues sought to base the study on experimental methods. He felt that in studying the insane, the patient, not the disease, should be the object of attention. In studying the insane he applied his clinical method of studying the skull with measurements and weights, and the living insane person by means of instruments to test the degree of sensitiveness to touch. Following this he endeavored to apply the same method to the study of criminals. Evidently he had been influenced in this attempt by such British students as Thompson and Wilson, and by Broca, the French anthropologist. However, being skeptical as to the existence of "moral lunatics" as described by both the French and English authors, he was desirous of applying the experimental method to a study of the differences between lunatics, criminals, and normal individuals. He found this method useless for determining the difference between criminals and lunatics, but the attempt suggested to him a new method for the study of penal jurisprudence, a matter to which he had never given serious thought.

He began dimly to perceive that the abstract judicial methods of studying crime hitherto pursued by jurists, especially in Italy, were barren of results and should be superseded by a direct study of the criminal in comparison with insane and normal individuals. So he began to study criminals in the Italian prisons. He made the acquaintance of the famous brigand Vilella. He found him to be a man of extraordinary agility who had been known to climb steep mountain heights with a sheep upon his shoulders. He discovered also in the brigand a cynical effrontery which led him to boast openly of his crimes. On the death of this brigand, Lombroso was designated to make the post-mortem examination. On opening the skull he found, on the interior of the lower back part at a spot where usually a spine protrudes upward in the normal skull, a distinct depression which he named the *median occipital fossa*, a characteristic which Lombroso's studies in comparative anatomy had shown him was to be found in inferior animals, especially rodents. He also found this depression correlated as in these animals with an overdevelopment of the *vermis* known in birds as the middle cerebellum. In his own words:

"This was not merely an idea, but a revelation. At the sight of that skull I seemed to see all of a sudden lighted up as a vast plain under a flaming sky, the problem of the nature of the criminal—an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals. Thus were explained anatomically the enormous jaws, high cheek-bones, prominent superciliary arches, solitary lines in the palms, extreme size of the orbits, handle-shaped or sessile ears found in criminals, savages and apes, insensibility to pain, extremely acute sight, tattooing, excessive idleness, love of orgies, and the irresistible craving for evil for its own sake, the desire not only to extinguish life in the victim, but to mutilate the corpse, tear its flesh, and drink its blood.

"I was further encouraged in this bold hypothesis by the results of my studies on Verzeni, a criminal convicted of sadism and rape, who showed the cannibalistic instincts of primitive anthropophagists and the ferocity of beasts of prey.

"The various parts of the extremely complex problem of criminality were, however, not all solved thereby. The final key was given by another case, that of Misdea, a young soldier of about 21, unintelligent but not vicious, although subject to epileptic fits. He had served for some years in the army when suddenly, for some trivial cause, he attacked and killed eight of his superior officers and comrades. His horrible work accomplished, he fell into a deep slumber which lasted twelve hours and on awaking appeared to have no recollection of what had happened. Misdea, while representing the most ferocious type of animal, manifested in addition all the phenomena of epilepsy which appeared to be hereditary in all the members of his family. It flashed across my mind that many criminal characteristics not attributable to atavism, such as facial asymmetry, cerebral sclerosis, impulsiveness, instantaneousness, the periodicity of criminal

acts, the desire of evil for evil's sake, were morbid characteristics common to epilepsy, mingled with others due to atavism "¹

Thus originated his work on the criminal, which up to that time had been entirely anthropological in its nature. Thus the clinical and the anthropological study of the criminal gave Lombroso his first program for a new approach to the study of crime and its punishment. He added to these investigations studies of the normal individual, the lunatic, the criminal, the savage, and finally the child. He, however, confesses that these attempts would have been sterile had not a large number of Russian, American, German, Hungarian, and Italian jurists corrected hasty and one-sided conclusions, suggested reforms and applications, and attempted to apply his ideas to the treatment of the offender.

With indefatigable industry Lombroso continued to study and publish his results. Bitter controversy soon arose. For many years the discussion raged in the international congresses of criminal anthropology and in other scientific meetings. Soon there came to his support a galaxy of scholars in his own and other countries who contributed other elements to the theories of the school.²

Lombroso was the child of his age and found in the thought of his day many of the ideas which were fruitful to him in his studies. English evolutionary philosophy and science were familiar to him. Psychiatry, begun in Germany and France, had commanded considerable attention. Since the days of Beccaria the discussion of crime and its treatment had been carried on with vigor on the basis of the Classical tradition.³

As the result of suggestions by others Lombroso's later thought included not only the anthropological and the psychiatric explanations of criminality but also the geologic, meteorological, economic, and social. Hence in his last book, which presents his riper thought upon the problem, while he still insists on the born criminal and the insane, he introduces also a third type called the *criminaloid*, whose criminality, while excited by external circumstances, is due nevertheless to innate traits which gain the upper hand under

¹ Ferrero, *Lombroso's Criminal Man* (New York, 1911), Introduction by Lombroso, pp. xii-xvi (Copyright by G P Putnam's Sons, New York, 1911)

² It is not without interest that two of the leading schools of criminology have originated in Italy. A line of writers on the punishment of crime represented by such men as Farinacio, Claro, and Marsilio had written on the problem as far back as the great Classical jurisconsults. See de Quiros, *Modern Theories of Criminality* (Boston, 1912), p. 11.

³ For a brief review of the precursors of Lombroso's anthropological and psychiatric theories, see Garofalo, *Criminology* (Boston, 1914), p. 66, also Havelock Ellis, *The Criminal* (London and New York, 1907), Chap. 2.

such circumstances. So according to Lombroso there are *three great classes of criminals*: *born criminals*, explained on the basis of atavism, that is, reversion to a lower type of evolutionary development, who form, according to Lombroso, about one-third of the total mass of offenders; second, *insane criminals*, including the idiot, the imbecile, victims of melancholia, and sufferers from general paralysis, dementia, pellagra, alcoholism, epilepsy, and hysteria; third, *criminaloids*, who are not born with physical stigmata and do not suffer from mental aberrations but who are of such a mental make-up that under certain circumstances they display anti-social conduct. They are not really criminals, but they act like them. Recognizing that a large proportion of the crimes committed cannot be attributed to lunatics, epileptics, or what he calls the morally insane, and that only one third of them show atavistic and morbid characters, Lombroso said that fully half of the criminals are not born criminals in the sense in which he used that term, nor are they insane or epileptics, but persons suffering from defects by reason of which he calls them criminaloids, so that under adequate provocation from without they commit crime. While the criminaloid may have no special skeletal, anatomical, or functional peculiarities, he represents, according to Lombroso, a milder type of the born criminal and may possess many of the physical defects noticed in the latter. However, the real distinction between the criminaloid and the born criminal, according to Lombroso, is psychological rather than physical.⁴

Lombroso died in 1909. Even before his death *criticism* not only outside of the Italian School, but within it as well, had changed the emphasis in certain respects. Further anthropological studies of both prehistoric man and contemporary primitives have shown that the evolution of the human type has not been along the simple lines followed by Lombroso. Consequently the theory that the criminal is an atavism physically has had in large part to be given up. Furthermore, more recent studies in clinical psychiatry have shown that in many respects the relationship of crime to epilepsy and insanity as suggested by Lombroso does not hold.⁵

Ferri. A younger member of the Italian or Positive school is Enrico Ferri, born in 1856 in the Province of Mantua. Graduating from the lyceum of his native town in 1874, he entered the University of Bologna, where he came under the influence of Pietro Ellero, at that time professor of criminal law, but interested in sociological studies. Here Ferri learned to work in the statistics of crime and developed his life's interest in the subject of crime. At twenty-one years of age in 1878, in his first publication, "The

⁴ Ferrero, *op. cit.*, Chaps. 1-4

⁵ Bleuler, *Textbook of Psychiatry*, translated by Brill (New York, 1924), p. 591

Theory of Imputability and the Denial of Free Will," he showed the direction his thought was taking. The next year he went to Paris, where he studied and wrote. Out of this period came his studies of criminality in France from 1826 to 1878. This study was recognized by French scholars as a contribution to this field. Returning in 1879, he became a pupil of Lombroso at the University of Turin. This contact with Lombroso proved to be of the very greatest importance in the career of Ferri. The next year he was appointed professor of criminal law in the University of Bologna. Here his lecture-rooms were crowded. Two years later he accepted a call to a chair of criminal law at the University of Siena. In 1884 he published the first edition of his study on *The Homicide*. In this book appears for the first time his classification of criminals. In the same year appeared the first edition of his *Criminal Sociology*. This remarkable productivity shows how rapidly Ferri had developed his thought. Having become a socialist, he was elected a deputy to the Italian Parliament by the socialist party. His political activity, however, did not prevent the continuance of his writing on criminality and law. In 1890 he changed universities once more, going to the University of Pisa to take the chair held for a long time by Carrara, the leader of the Classical School of criminal law in Italy. Because of his socialist activities in 1893 he was removed by the University from this chair. In 1896 he founded the socialist paper *Avanti*. Retiring from the teaching profession, he began the private practice of law at Rome. In this he continued until 1904, when he was made professor of criminal law at the Royal University in Rome.

While Ferri has a large number of books and papers on criminology to his credit, his most important work is his *Criminal Sociology*. In successive editions changes were made in response to new knowledge and to the criticisms which its publication and the publications of the other members of the School excited, but the main outlines of his thought appeared in the first edition in 1884.

While adhering to Lombroso's anthropological theories of the genesis of crime, Ferri contributed an *emphasis upon the social factors* and gathered together and placed in logical form more clearly than any other member of the School the various *factors which enter into the making of the criminal*. These in Ferri's presentation are three: (1) the physical factors, including the geographic, the climate, temperature, etc.; (2) the anthropological, including the psychological; and (3) the social, including economic and political factors as well as age, sex, education, religion, etc.

In addition to his labors in presenting in logical form the results of the Italian School's investigation as to the causation of crime, Ferri contributed

a number of generalizations which show the brilliance of his mind. Perhaps the most famous of these is his so-called "*law of criminal saturation*," by which term he described the fluctuation in the statistics of crime as social conditions varied.

On the penological side Ferri performed a similar service for the Italian or Positive School. Here he brought together the material on the equivalents of, or substitutes for, punishment and worked out a theory of justice without the Classical basis of free will in the criminal. This theory is the theory of social accountability.⁶ In his outline of penology the equivalents of punishment, or what we should call preventive measures, played the largest rôle. Among these equivalents he mentions free trade, abolition of monopolies, suppression of certain taxes which constitute a constant source of agitation, the substitution of gold and silver for bank-notes, thus preventing counterfeiting, cheap workmen's dwellings, preventive and auxiliary institutions for invalids, public savings banks, wider streets and better lighting to render offenses more difficult, birth-control to prevent abortions and infanticides, the improvement of laws on marriage, on the adoption of illegitimate children, on the investigation of paternity, on breach of promise, divorce, etc., which would prevent offenses connected with sex and family, improvement of mercantile laws relating to the responsibility of bank and company directors, bankruptcy, etc., state control of the manufacture of weapons, the establishment of courts of honor against dueling, the prevention of pilgrimages, provision for the marriage of the clergy and the suppression of monasteries, the abolition of many holidays, provision for public recreation, the establishment of foundling homes, public suppression of immoral publications and accounts of famous trials, and the debarring of the young from police courts and assizes.⁷

These suggestions of Ferri, however, did not secure the assent of all members of the Positive School. Garofalo not only objects to details in this program of "penal substitutes" but severely criticizes Ferri's scheme in that, while it proposes that some government control through law be done away with, it contemplates that legislation be extended to other things, with the result that while the number of crimes of smuggling, for example, will be lessened, new crimes against the proposed legislation will occur. Furthermore, it raises the whole question of the function of legislation and government control.⁸

⁶ Ferri, *Criminal Sociology* (Boston, 1917).

⁷ *Op. cit.*, Part II, Chap. 5, and Part IV. See also de Quiros, *op. cit.*, p. 29.

⁸ Garofalo, *Criminology* (Boston, 1914), pp. 189, 190.

Garofalo. The third of the three great founders of the Italian School is Garofalo. His parents belonged to the nobility but were of Spanish origin. He was born in Naples in 1852. At the conclusion of his university studies in law he became a magistrate, thus entering what was a profession in itself all over Europe, and rapidly attained distinction. He has held a number of important positions in various parts of Italy as a magistrate. He was a senator of the kingdom and professor of criminal law and procedure at the University of Naples. His interest in criminal law reform led to his appointment by the Minister of Justice in 1903 to draft a code for the reformation of Italian criminal procedure, a labor which, however, for political reasons the government was forced to lay aside.

While Garofalo has been active in various associations and learned bodies having to do with sociology and criminology, he has written a number of books upon the subject of crime and criminals, such as *Criminal Attempt by Insufficient Means*; *The True Manner of Trial and Sentence*; *Indemnification of Persons Injured by Crime*; *The Socialist Superstition*; and *International Solidarity in the Repression of Crime*, extending in time from 1882 to 1909. His fame, however, rests upon his *Criminology*. This book grew out of a monograph published in 1880. The first edition appeared in 1885, the second in 1891. He himself prepared a French translation, which went through five editions, the last of which was a radical recasting of the whole work. Translations were made into Spanish and Portuguese, and in 1914 an English translation was published in the United States.⁹

Garofalo agrees with his colleagues, Lombroso and Ferri, in emphasizing the positive approach to the problem of crime, i.e., he thinks that crime can be understood only as it is studied by scientific methods. He stresses the study of the criminal nature and the circumstances in which the criminal lives, which he believes constitute the medium that excites to crime the individual with abnormal traits. With them he agrees in the attempt to suggest certain reforms in the treatment of the criminal in line with their discoveries as to his nature. He is also one with them in his attack upon the position of the Classical School. The criminal is not a free moral agent but is the product of his own traits and his circumstances. Hence the criminal should be treated not in accordance with a metaphysical theory of freedom of the will and consequent responsibility for his acts but upon an understanding of his nature. The external circumstances are of value chiefly in formulating a policy for the prevention of crime, although the environment should be studied when the question arises as to whether the criminal should be at large.

⁹ Garofalo, *Criminology* (Boston, 1914), Translator's Preface, p. xiii

Garofalo differs from his colleagues in (1) his definition of crime; (2) his classification of criminals; (3) his greater emphasis on the psychological anomaly of the criminal; and (4) his naturally greater stress on judicial reforms, since he alone of the three was a jurist.

In *his definition of crime* Garofalo eliminates from the term *criminal* all whose actions are not an offense against the sentiment of "pity" or that of "probity." All others whose actions are forbidden by the law are in no true sense criminals, although he admits that the law must take cognizance of them.¹⁰ He adds to his definition of crime what seems to be an afterthought and inconsistent with the foregoing in some cases, those acts which are "injurious to society." Therefore, crime, according to Garofalo, is an act which offends the sentiments of pity or probity possessed in the "average measure" by "civilized mankind,"¹¹ and which is injurious to society.¹² Neither Lombroso nor Ferri defined crime in this limited way.¹³

Garofalo's classification of criminals is fourfold: (1) murderers; (2) violent criminals; (3) criminals deficient in probity, and (4) lascivious criminals. This classification based upon what he calls "moral anomaly" provides, Garofalo thinks, the distinct advantage of "directly suggesting appropriate measures of repression."¹⁴ On the basis of this classification he severely criticizes Ferri's fivefold classification in that it "is without scientific basis and lacks homogeneity and exactness." There is no anthropological justification for the attempt to distinguish the born criminal, the habitual criminal and the passionate criminal. It offers nothing tangible to the law-maker, since a criminal may with equal propriety be assigned to any one of the several classes, and therefore it precludes the possibility of providing measures of repression answering respectively to distinct classes of criminals.¹⁵

While Lombroso and Ferri do not neglect the psychological anomaly of the criminal, Garofalo puts psychic, or as he prefers to call it, "moral," anomaly at the very center of his theory. With his definition of crime as an offense against what he calls the "sentiments," or emotions, of pity and probity, naturally the inquiry into the causes of such offenses concerns itself with the reason for their absence in criminals. He considers the abnormal physical characteristics of criminals, but only because they help to explain the psychic anomaly. He admits that his work belongs to the school

¹⁰ *Op. cit.*, pp. 45, 59

¹¹ *Op. cit.*, p. 60

¹² *Op. cit.*, p. 61

¹³ For criticism of this definition see Chap. II, *ante*

¹⁴ *Op. cit.*, p. 131

¹⁵ *Op. cit.*, pp. 132-134

of criminal anthropology only on condition that "it be granted that of this science criminal psychology is the most important chapter."¹⁶

Knowing the difficulties facing the judge and the courts *Garofalo grapples with the reforms in criminal procedure in a more masterful way than either of his colleagues.* No less than Lombroso and Ferri was he aware of the inconsistencies of the legal practices of his day and that they often stood in the way of the repression of crime, but as a magistrate he knew better than they the obstacles to reform and what changes were practicable in the face of established methods.

The result of this combination of radical ideas as to the nature of the criminal with the practical necessities of social defense appears in *his theory of punishment.* This is to be found in his chapter on "The Law of Adaptation." Here he shows that he is the child of the age in which the evolutionary theories of Darwin and Spencer were finding applications outside the biological field. Nature eliminates those organisms which are not adapted to the conditions of life. That same process is followed by groups of people, such as families and clubs. If a person comes into a home and shows by his actions that he does not know how to behave himself there, he is not invited again. If a club member conducts himself in a manner unbecoming a gentleman, he is expelled. So the larger social group, society, eliminates those who show by their conduct that they are not adapted to civilized life.

The *three means of elimination* are (1) death; (2) partial elimination, including imprisonment for life and transportation; and (3) enforced reparation. The first Garofalo holds should be applied only to those whose arts are symptoms "of a permanent psychologic anomaly which renders the subject forever incapable of the social life" Such are the members of his first class, "those offenders, who . . . are prone to commit murder solely from egoistic motives—the influence of prejudices or the fault of the environment in no wise contributing." For those whose savage instincts make them incompatible with any civilized environment and who therefore are fit only for the life of nomadic hordes or primitive tribes he recommends either life imprisonment or permanent expulsion to a penal colony beyond the sea. He favors the latter of these two alternatives because it does not degrade the criminal as does a prison. He proposes transportation for professional thieves, vagabonds, and habitual criminals. In the case of youthful offenders the elimination should be only relative. For these he suggests agricultural colonies. For others whose anomaly is less pronounced he recommends expulsion of the offender from his particular social situation, i.e., he should be permanently prohibited from practising the profession of which he has

¹⁶ *Op. cit.*, Author's Preface, p. xxx

shown himself unworthy or deprived of the civil or political rights which he has abused. Enforced reparation he would apply to that class of criminals who are guilty of "true natural crime," who do not lack moral sense but lack a sufficiency of altruistic sentiments, and who have committed crime by force of exceptional circumstances or the pressure of a situation which is not likely to occur again. It would apply to persons guilty of such crimes as cause the victim damage in his property or reputation.

Garofalo attempts to show that such a theory of punishment and such methods would fit in well with the public sentiment which demands punishment not only that the offender may not offend again but also because he has offended; with the object of intimidation; and with the social selection resulting from the more severe punishment of former times. The selection for extermination through capital punishment he believes explains in part the low crime rate in England. In former times England killed off most of those with this moral anomaly and therefore does not have their progeny to deal with to-day. These punishments would not accord with the purpose of vengeance or that of expiation, which as objects of punishment Garofalo abjures.

This theory of punishment, resting on Garofalo's theory of criminality as due to "moral anomaly," has no place in it, so far as the "true criminal" is concerned, for what he calls "the correctionalist school," i.e., the attempt to reform such criminals. Whatever number among them—always small in his estimation—would be reformed in the overseas colonies or, in the case of younger offenders, in the agricultural colonies at home would be reformed at home under his plan. He points out in support of his pessimism regarding reformation of such criminals the large number of failures under the correctionalist theories in France and even among the young offenders at Elmira. Elimination, either absolute or partial, from society, in most cases without hope of ever returning, and reparation are the only measures he considers efficacious in the struggle against crime. It must be remembered in all this that he is discussing only those whom he calls "true criminals." Why he calls his theory the "law of adaptation" it is difficult to understand. It would better have been called the law of elimination on the basis of lack of adaptability.

Evaluation of the Italian School. Despite the vagaries which characterize the Positive or Italian School, the work of Lombroso and his associates has put criminology on an entirely new basis, the study of the criminal in the light of his individual characteristics played upon by the circumstances of life rather than, as in the Classical and Neo-Classical Schools, the criminal as

a free moral agent who chooses to commit an act injurious to society.¹⁷ Crime with the Italian School is no longer a juridical abstraction, but the expression in social life of three sets of factors—the (1) physical and (2) social environments playing upon a (3) personality, which is essentially abnormal by reason of heredity or disease. While the theories of atavism have been modified, and the connection of crime with insanity and epilepsy has been stressed less by his followers than by Lombroso himself, the emphasis he gave to the anthropological and psychiatric characteristics of the criminal has been of the greatest fruitfulness in subsequent thought. Again, while Ferri's moderate socialism has been made the chief feature in the penology of such writers as Bonger and of some of the Italian writers, such as Fornasari di Verce, in others the socialistic remedy is ignored and suggestions have been made to remedy economic conditions on the basis of the present economic organization of society. There can be no question, however, that the emphasis of Ferri on the economic and social factors has had an influence on subsequent students and in France has resulted in the development of a sociological school of criminology. As to Garofalo, it is certain that, although his sociologic definition of crime has not stood the test of criticism, in that it excluded all acts forbidden by society which do not offend the sentiments of pity and probity, his attempt to define crime by the double standard of psychologic (pity and probity) and sociological (injurious to society) criteria has led to a clarification of the problem. Moreover, his contributions to the legislative and judicial methods of dealing with the criminal and of preventing crime have been of the greatest value.

Out of the discussions of this school have emerged various one-sided attempts to explain crime, such as the pathological explanation with emphasis upon epilepsy by the Italians Roncoroni, Ottolenghi, and Capano, upon neurasthenia by Benedikt, and upon psychopathic states by Igagnieros; the advocacy of degeneracy as the explanation by such writers as Magnan, Laurent, Dallemande, Marro, Galton, Virgilio, Ribot, and Bleuler; the an-

¹⁷ The contrast sometimes drawn between the Classical School and the Italian School, namely, that the former studied the crime while the latter studied the criminal, is not valid in all respects. The contrast is not so much that between study of the crime and study of the criminal as between a theory of punishment and a theory of the causation of crime. The Classical School was interested primarily in punishment, while the Positive School is concerned primarily with understanding why the criminal offends and secondarily with what measures should be taken with him in the light of its findings. Beccaria was interested in the criminal as much as Lombroso, but the point of his interest was the treatment of the criminal, while Lombroso was concerned with the question of why the criminal acts so. It was Beccaria who was interested in the tyrannies under which the criminal suffered. That note is secondary with Lombroso. With Beccaria the interest in the criminal is humanitarian, with Lombroso, scientific.

thropologic-sociologic explanation, represented by Lacassagne, Aubry, Dubuisson, and others; and the socialistic theories of Turati, Loria, Colajanni, and Bonger.¹⁸ Advocates of these various theories based upon the attempt to simplify unduly the problem of the genesis of crime are still with us. Goring in England, representing the biometric emphasis of the Galton Laboratory of London, insists that the criminal is a defective personality.¹⁹ Bonger, on the other hand, sees only the economic factors in the production of the criminal and, while not denying the existence of pathological criminals, declares that they are not the subject of sociological study.²⁰ Recently there has been a great revival of emphasis on the psychiatric causation of crime by such writers as Goddard, Healy, White, Hoag, and Williams, to mention only a few American writers.²¹ Of only one thing can we be sure with our present knowledge. except in a very general way, we cannot say which of these various classes of factors are predominant in the production of the criminal. Much more precise measurement of the valence of each set of factors must be made before the relative importance of each can be stated with anything resembling exactness and before we can predict what will happen in a particular case.

However, out of the discussion and study stimulated by the Italian School have come *some very important results for criminology and penology*. (1) Emphasis has been shifted from legal, metaphysical, and juristic abstractions as a basis for penology to a scientific study of the criminal and the conditions under which he commits crime. In other words, primary emphasis has been from penology to criminology. (2) As a result, what slight attention has been given to penology by those influenced by the work of the Italian School has been based upon *a priori* inferences from their study of the criminal rather than upon a scientific study of experiments in treating the criminal. This is not to say that these inferences have no value as hypotheses which may be tested by social experiment, but for the most part the penology which has grown up in the wake of Italian influence in criminology has been speculative rather than scientific. (3) The old objects of punishment have been seriously altered. (a) Retribution as a purpose of punishment has been eliminated. Criminals are to be treated, not punished. (b) The purpose of

¹⁸ de Quiros, *Modern Theories of Criminality* (Boston, 1912), pp. 32-79.

¹⁹ Goring, *The English Convict A Statistical Study* (London, 1913).

²⁰ Bonger, *Criminality and Economic Conditions* (Boston, 1916).

²¹ Goddard, *Feeble-Mindedness. Its Causes and Consequences* (New York, 1914); *The Juvenile Delinquent* (New York, 1923); *The Criminal Imbecile* (New York, 1915). Healy, *The Individual Delinquent* (Boston, 1915); *Mental Conflicts and Misconduct* (Boston, 1917), *Pathological Lying, Accusation and Swindling* (Boston, 1915), *Honesty* (Indianapolis, 1915), White, *Insanity and the Criminal Law* (New York, 1923), Hoag and Williams, *Crime in Abnormal Minds and the Law* (Indianapolis, 1923).

deterrance has been modified quite radically, in that it is believed that for those criminals who cannot foresee consequences of their acts any threat of punishment has no effect. (c) Reformation has received a new emphasis but is to be applied with discrimination to the various classes of criminals. Prisons should be educational institutions to teach the delinquent new habits (d) The protection of society is seen to be the primary purpose of the treatment of the criminal. (e) Prevention of crime, by discovering as early as possible those with characteristics likely to lead to delinquency, altering the external conditions which make for crime, and throwing around each person the influences which incite to social behavior, is receiving primary emphasis

THE MODERN CLINICAL SCHOOL

In spite of the discussion pro and con on the theories of Lombroso and his colleagues, the work of the Italian School has wrought a revolution, especially in criminology, to a very much less extent in judicial procedure, and to some degree in penology. What may be called the modern clinical school of criminological and penological theory has arisen as the result of the work of the Italians supplemented by more recent research in the modern sciences concerned with human conduct. To the Italian School modern criminology and penology owes a great debt in spite of the fact that many specific theories of the Italians cannot be accepted. They were pioneers in a movement which has meant nothing less than a revolution in the investigation of the criminal and in the theories concerning crime and consequently in penological theories. The modern clinical school, like the Italian school, studies the criminal rather than the crime. That does not mean that the modern school ignores popular sentiment with regard to the difference in social danger between a violent criminal and a petty thief. It does mean, however, that the modern school is interested primarily in the personality of the criminal himself in order to determine the conditioning circumstances which explain his criminality and in order to obtain light upon the problem of how he should be handled by the social group.

On the other hand the clinical school has changed the emphasis somewhat in the study of the criminal. While Lombroso especially emphasized the physical characteristics of the criminal, his two most important colleagues, Ferri and Garofalo, stressed rather the psychological and the social. The clinical school likewise emphasizes the psychological and the social, but in terms provided by the new knowledge furnished by the later psychology and sociology.

The modern clinical school, given its early impetus by the Italians, owes even a greater debt to modern science. Attention is given to the physical

factors to-day, but chiefly in the field of physiology and physiological chemistry. Since the Italians wrote, great progress has been made in studying the bearing of the physiological functioning of the human body upon conduct, especially the influence of the endocrine glands. With every increase of knowledge in this field this school finds new light upon its problems of criminal genesis and the treatment of the criminal.

Moreover, the advances in psychology, especially the development of mental testing, likewise bring aid to the criminologist and the penologist. With the development of tests touching on the emotions further light is shed upon human conduct. Even beyond tests our increasing knowledge as to the emotional nature of man has provided additional diagnostic material by which the criminologist may be enabled to understand the criminal.

Growing out of psychology, and not yet as objective in its methods, is psychiatry or the study of abnormal functioning of the mind and emotions. Originally called dynamic or analytical psychology, psychiatry through the work of Freud, Adler, Jung and of many other representatives of the subject in this country and abroad has provided certain theories which throw light upon some of the criminals and suggests possible explanations in certain types of criminal conduct. The movement owed its inception to Freud, who emphasized the sexual root in mental and emotional disturbance. At the present time, however, it has gone far beyond the basis of Freud. The whole mental hygiene movement belongs here.

The modern clinical school also benefits from the emphasis which has come into social psychology through the behavioristic doctrine of conditioned reflex and conditioned response as an aid to the explanation of human conduct. Social psychology, emphasizing the influence of interaction between individuals and groups and the relationship between emotional balance and intellectual integrity, again has benefited the criminologist and penologist and assisted them in the formation of theories which fit the facts supplied by modern science.

In general, the theory of the modern clinical school on the side of criminogenesis is that the criminal is the product of his biological inheritance conditioned in his development by the experiences of life to which he has been exposed from early infancy up to the time of the commission of crime. In studying the criminal, therefore, its methods represent an approximation to the processes of modern medicine. By studying the offender in every possible way, the modern school promises to throw light on his conditioning and arrive at a diagnosis of the factors entering into each individual case. From the standpoint of penology this school attempts to adapt the treatment of each individual in accordance with the diagnosis obtained by scientific study.

of the criminal. It is clear that the modern clinical school entirely repudiates the old theories of punishment—retribution, expiation, and to a lesser degree intimidation—and gives a new content to the old terms *deterrence*, *reformation*, and *protection of society*. Deterrence in the modern school is of value chiefly to those individuals who compose a large part of the population who never get into trouble. Deterrence does not rest upon the severity of punishment in this theory but upon the far larger base of inconvenience to be feared and social stigma to be avoided. Even reformation takes on a new meaning, and crime is looked upon not as some sort of abstract entity but as a kind of conduct which grows out of the response of a certain kind of biological organism to certain kinds of experiences. Not in a religious or a mystical, ethical sense, but in a scientific sense, reformation becomes *reformation*. As criminal conduct is the outcome of a response by the biological organism to certain conditions to which the organism was subjected, a change in the kind of conduct desired must come about by a reconditioning of the organism achieved by subjecting it to a new set of circumstances and experiences. Imprisonment under this theory should be retained as a method of treating those who fail to respond to extra-institutional methods intended to change their way of living and their conduct and who must be kept quarantined from society. For the others new terms have been invented, such as *correctional treatment* or *reorientation*.

Already new penal institutions have risen in response to this theory. Those who upon diagnosis are found to be suffering from either physical or mental disease are placed in appropriate hospitals. Those who are the victims of social conditions, whether of family or community origin, are placed in different conditions with the hope that they will respond in a different way. So we have probation, correctional colonies, and such arrangements. Juvenile and other courts which have had attached to them clinics of various sorts for the examination of those charged with crime, psychiatric field service to be found in a number of our States, and the anthropological service of the Belgian prison system all are devices which have been invented to meet the situation revealed by the modern clinical school. Much remains still to be done, however, in reorganizing our courts, our criminal procedure, and even our institutions in accordance with this new theory of the nature of the criminal and the new penal theory.

QUESTIONS AND EXERCISES

1. Point out the differences between the Classical School and the Italian or Positive School.
2. Which school has the most influence in present-day legislation and court practice? Explain.

- 3 Distinguish between the Clinical School and those previously discussed
- 4 What effect would the acceptance of the Italian School theories have upon judicial procedure? acceptance of the theories of the Clinical School?
- 5 Point out the logic of each of these schools in the method of treating the convicted offender.

PART IV
MODERN PENAL INSTITUTIONS

CHAPTER XVI

CAPITAL PUNISHMENT

ONE of the oldest of our penal institutions is capital punishment. Killing the offender was a common penalty in the system of private vengeance, was also practised in group vengeance, and was the only means of wiping out the danger to the group in case of a serious violation of the taboos, when an act was considered impious.¹

EVOLUTION OF THE DEATH PENALTY

It is difficult to reconstruct the early history of capital punishment, but we can see its psychic and social rooting in the reaction to injury on the part of the individual injured or that of the group whose member was killed and in the superstitious fear of the group that an impious act by a member would call down the wrath of the ancestral spirits or of the god upon the whole group. Out of the latter arose public concern with the criminal within the group. Reference has already been made to the destruction of Achan and his family because he had appropriated the spoils of war which were believed to be sacred to the God of the Hebrews.² It is probable that the burning of a harlot by the Hebrews was a means of turning aside from the group the wrath of God.³ Capital punishment under the Hebrew law probably arose in the same way for other crimes, e.g., adultery (*Lev.*, 20:10; 19:20-22), bestiality (*Ex.*, 22:19, *Lev.*, 18:23; 20:15, 16), blasphemy (*Numbers*, 15:30; *Lev.*, 24:11-16), breach of the ritual (*Numbers* 4:15, 20; *II Sam.*, 6:7), witchcraft (*Ex.*, 2:18), kidnapping (*Deut.*, 4:7), cursing father or mother (*Ex.*, 21:17; *Lev.*, 20:9), striking parents (*Ex.*, 21:15; *Deut.*, 21:18-21), rape (*Deut.*, 22:25). Witchcraft is a capital offense among some primitive peoples.⁴

¹ Robertson Smith has said that in early society "we may safely affirm that every offense to which death or outlawry is attached was viewed primarily as a breach of holiness, for example marriage within the kin and incest are breaches of the holiness of the tribal blood which would be supernaturally avenged if men overlooked them" *Religion of the Semites* (London, 1901), p. 163

² *Joshua*, 7 1-26

³ *Leviticus* 21:9, *Genesis*, 38:24

⁴ Clerico, "Of Crime and Punishment in New Guinea," *Asia*, April, 1923, p. 277

METHODS OF CAPITAL PUNISHMENT

Beating. In ancient Assyria a mace was used to crush the skull.⁵ It was also employed in Judea in the time of the Maccabees (II Mac., 6:19, 28, 30).

Beheading. Beheading was not sanctioned by the Mosaic Law but was frequently practised among the Assyrians, Persians, Greeks, Romans, and many others.⁶ It seems to have been practised in ancient Egypt (Gen., 40:19) and in ancient Israel, as illustrated by the fact that Ahab's sons lost their heads by the command of Jehu (II Kings, 10:6-8). It was the method whereby John the Baptist was dispatched by Herod (Matt., 14:8, 10; Mark, 6:27). The Romans used it as a method of capital punishment for Roman citizens condemned to death, and it is probable that Saint Paul died by this method. It is still used in parts of the Far East and has been revived by Hitler in Germany. The following description indicates the elaborate preparation and professional technique sometimes employed in this form of capital punishment.

"The next day I heard so much talk of 'execution' that I decided to stop work long enough to see it. The Siamese made a sort of holiday of it. This was to be a three days' festival. Thirty-six men in all were to be put to death, twelve a day. Squatting in an open pavilion, with all their relatives and friends squatting about them, they were given their last meal. All sorts of food and delicacies were brought, and every one concerned had a 'grand feed'. At the appointed hour, the procession formed to walk through the town from the pavilion to the execution-grounds, which were about a mile away and near the palace. The sheriff was the official head of the procession, but before him walked a man with a large bell, which he swung up and down. The prisoners followed with a line of police on each side. The friends and relatives walked outside this line or brought up the rear. I stayed near the head of the procession. When we got to the execution-grounds there must have been a thousand people, gathered in a great space before a grove of palm-trees. They politely yielded to the relatives and friends of the prisoners the positions from which the view would be best. I found myself a place from which I could see everything.

"Twelve banana-leaves were laid in a line, equal distances apart, across the center of a clear space, which was three or four hundred feet each way. The twelve prisoners sat cross-legged on these. Behind each of them was a stake with a crosspiece to which their elbows were tied. They were handcuffed but their hands had some play. Back of the stake and crosspiece was a higher stake still. The use this was to be put to I found out later. The prisoners were given cigarettes

⁵ Layard, *Nineveh and Babylon*, p. 468, quoted in Hastings, *Dictionary of the Bible*, I, 523.

⁶ *Ibid.*, p. 523.

and every one of them began to puff hard. When they were all well tied the sheriff came up to each in turn and, stooping, picked up handfuls of mud from the ground. He plastered it first in one ear and then in the other. He did this, I was told, so they would not hear the executioner when he came up behind them. Then he pushed their heads over and put a small spot of mud on the backs of their necks. All the time, even with their heads bowed, they kept on smoking.

"When all twelve men were mud-plastered and bent over, a signal was given and out came the executioners, twelve of them, dancing and brandishing long straight swords above their heads. They were dressed in bright red, their *sarongs* caught up to look like trousers and their faces painted in stripes and blobs of red and yellow. They took their places, one behind each prisoner. The crowd was gesticulating and laying bets as to which executioner would do the neatest job. Another signal was given. The swords made a fancy swirl in the air and all descended at once. They halved the blobs of mud, cut almost through the necks but did not quite sever the heads from the bodies. This was left for a second set of executioners, who finished the job and set the heads on the sharp high stakes behind. The audience was quite still while the blows were being struck. When the heads were set up, some of the women screamed and ran away. I looked at the head nearest me, a faint line of cigaret smoke was curling out of the nose. I had had enough.

"The twelve men that died that day were all members of the same gang. They had tortured a rich Chinaman, pulling out his nails and roasting his feet until he told where his treasure was hidden. They stole it and then killed him. When I heard the bell ringing the next day, I was careful not to find out what the prisoners had done."⁷

Burning. Burning was a method of death penalty practised among some peoples. Achan was burnt with fire. A priest's daughter, guilty of fornication, was to be burned (*Lev.*, 21:9). This punishment was also visited upon one guilty of incest with the wife's mother (*Lev.*, 14). The Philistines threatened to burn Delilah, Samson's wife, and her father's kindred if she did not solve the riddle which Samson had propounded to them (*Judges*, 14:15). Nebuchadrezzar, King of Babylon, roasted two false prophets in the fire, probably for inciting rebellion (*Jer.*, 29:22). That it was a common method in Babylonia is indicated by the story concerning the fiery furnace and the three Hebrew children (*Dan.*, 3). King Esarhaddon burned a king alive.⁸ Antiochus Epiphanes, in attempting to force the Jews to give up their religion, put them to the test of eating swine's flesh. Seven brothers with their mother were shamefully treated by the king, who after maiming

⁷ Charles Mayer, "Wild Beasts on the China Sea," *Asia*, April, 1923, p. 251.

⁸ Quoted in Hastings, *Dictionary of the Bible*, I, 523. Cf *Isaiah*, 43:2.

one of them "commanded to bring him to the fire, being yet alive, and to fry him in the pan" (II Mac., 7:5).

Cutting Asunder. Both mutilating the body until death ensues and the cutting or sawing of people in twain are found in Biblical and other literature. Thus King Nebuchadrezzar threatened the Chaldean soothsayers if they would not make known to him the interpretation of his dream: "Ye shall be cut in pieces and your houses shall be made a dunghill" (*Dan*, 2:5; 3:29). Hazael, King of Syria, executed men by putting them under sledges with iron spikes (II Kings, 8:12; 10:32, 33; *Amos*, 1:34). It is probable that the Ammonites were also subjected to this treatment (II Sam., 12:31; I Chron., 20:3). This method of punishment is referred to in *Hebrews* 11:37, where it is said that some of the Christians were sawn asunder. David executed the people in one of the cities he conquered by putting them "under saws and under harrows of iron and under axles of iron and making them pass through the brick kiln" (II Sam., 12:31).

Crucifixion. Crucifixion was commonly used by the Romans as a method of capital punishment for those not citizens of the Empire, although Verres crucified even Roman citizens in Sicily and Galba in Spain. The cross was probably a development of the stake on which criminals were sometimes impaled. It is thought that crucifixion originated with the Phoenicians, from whom it passed to the Greeks and Romans. It certainly was in use among the Phoenicians, Carthaginians, and Numidians. It is said that Alexander on one occasion crucified as many as 2,000 Tyrians. After the death of Herod the Great, it is reported that Varus crucified 2,000 rioters.⁹ Josephus says that Titus crucified so many Jews after the destruction of Jerusalem that there was neither wood for the crosses nor place to set them up.¹⁰ It appears that the Jews did not practise crucifixion at any time in their history.¹¹

Drowning. Drowning was a penalty in Babylonia for adultery, for being a bad wife, for incest with daughter-in-law, for deserting husband's house in his enforced absence if provided with maintenance, and for selling beer too cheaply.¹² This mode of punishment was practised also by the Jews and the Romans.¹³

Destruction by Wild Beasts. Tearing to pieces by wild beasts was employed by a number of ancient peoples. The ecclesiastical instance is

⁹ Josephus, *Antiquities* XVII x.10.

¹⁰ *Jewish Wars* V.xi 1

¹¹ Hastings, *Dictionary of the Bible*, I, 528

¹² *Code of Hammurabi*, Sections 109, 129, 133, 143, 155, in Hastings, *Dictionary of the Bible*, Extra Volume, p 595

¹³ Hastings, *op. cit.*, I, 524

that of Daniel, who was thrown into the den of lions.¹⁴ In the Roman arena in the latter days of the Empire Christians condemned to death were executed in this manner. This practice is reflected in certain of the writings of the New Testament.¹⁵ This practice may also be referred to by Saint Paul when he says: "If after the manner of men I fought with beasts at Ephesus, what doth it profit me?"¹⁶ During the persecution of the Christians under Nero many of them suffered death in this manner.¹⁷

Flaying. Capital punishment by skinning alive was practised in ancient Assyria, in Persia, and in ancient Scythia.¹⁸

Hanging. In ancient Israel hanging was a mark of indignity practised upon the lifeless forms of criminals. As a form of execution it does not appear in the Mosaic legislation. It is probable that the chief baker of Egypt in the time of Joseph (*Gen*, 41.13) was thus exposed to shame after being killed or else was impaled. Under Persian rule gallows were certainly used as a method of execution. The well-known case of Haman exemplifies this method (*Esther*, 2:23, 7.9, 10, 14). In later times it was largely used in England and on the Continent.

Impaling. Impaling the criminal upon a sharp stick was a common custom in Assyria. Usually this was done by having the stick penetrate the body just below the breast bone. It was also frequently used in Persia. Darius is said to have impaled 3,000 Babylonians.¹⁹ Impaling was also used among the Romans.

Precipitation from a Height. Throwing prisoners from the Tarpeian Rock at Rome was a method of execution used chiefly for slaves guilty of theft. It is said that Æsop, the famous writer of fables, was executed in this manner. During the Maccabean wars in Judea Jewish mothers with infants in their arms were thrown from the walls of Jerusalem (II *Mac.*, 6:10).²⁰ Hebrew tradition has it that the Israelites precipitated 10,000 of the Edomites from the top of a rock (II *Chron*, 25:12). This method of execution was also used by Assurbanipal in ancient Assyria.²¹

¹⁴ *Daniel*, 6

¹⁵ II *Timothy*, 4 17

¹⁶ I *Corinthians*, 15 32

¹⁷ Moeller, *History of the Christian Church* (London and New York, 1898), p 78; McGiffert, *The Apostolic Age* (New York, 1909), p 629

¹⁸ Rawlinson, *Ancient Monarchs*, I, 478; III, 246. Herodotus, *History*, Book IV, Section 64, Book V, Section 25

¹⁹ Rawlinson, *op. cit.*, p 477, Layard, *Nineveh and Babylon*, p. 205, cited in Hastings, *op. cit.*, I, 525 See also *Ezra*, 6 11

²⁰ Wines, *Punishment and Reformation*, Revised Edition (New York, 1919), p 68

²¹ Hastings, *op. cit.*, I, 526

Stoning. Stoning was the characteristic method of execution among the ancient Hebrews. It was applied both to men and to beasts who were to be judicially exterminated. The Hebrews used this penalty for the taking of the spoils of war by Achan, for adultery and unchastity, for blasphemy, for divination, idolatry, dishonoring parents, false prophecy, and Sabbath-breaking.²² The witnesses hurled the first stones and then were joined by other persons in the crowd. Among the Persians, prisoners were crushed by stones.²³

Among the Romans stoning was a military punishment which came to be forbidden by Constantine. It is said that Æschylus, the Greek tragedian, was condemned to suffer such a death for having written an irreverent tragedy, but the sentence was not executed. According to a law of Æthelstan, King of England in the tenth century, male slaves were stoned as a punishment for theft.²⁴

Strangling. Strangling was a form of punishment sometimes used among the Jews and neighboring peoples.²⁵ It seems also to have been employed by the Romans.²⁶

Smothering. Suffocation, a modification of strangling, was a common Persian method of dealing with offenders. Hazael, who was afterwards King of Syria, killed his master, King Benhadad, by taking the coverlet of the bed, dipping it in water, and spreading it on his face, thus smothering him to death (*II Kings*, 8:15). During the Maccabean wars Menelaus was suffocated by Antiochus by being thrown into a ditch full of ashes (*II Mac.*, 13:4-8).

Other Methods. Other methods of execution have been used in different countries. Methods have varied with the people and with the times. After the invention of gunpowder shooting became a common method and is still retained for military executions. In a few states it also survives as a method of executing common criminals. With the development of modern civilization, however, most of the methods described above have become obsolete.

PRESENT-DAY METHODS

Hanging, originally a public spectacle for the purpose of deterring spectators from the commission of crime, has become relatively secret, only the

²² See *Joshua*, 7:25, *Exodus*, 8:26, *Deuteronomy*, 22:21, 24; *Leviticus*, 24:10-24; *I Kings*, 21:10, *Acts*, 7:58, *Leviticus*, 20:6, 27, *Deuteronomy*, 5:10, 13:10, 21:21; *Exodus*, 31:14, 35:2, *Numbers*, 15:35, 36

²³ Rawlinson, *Ancient Monarchs*, III, 247

²⁴ Wines, *op. cit.*, p. 66

²⁵ Robertson Smith, *Religion of the Semites* (London, 1901), p. 418

²⁶ Hastings, *op. cit.*, I, 527

officials required and newspaper reporters being allowed to be present in most countries. New York State in 1835 abolished public executions. By 1906 Florida was the only State which allowed them. This development took place because it had become apparent that public execution, instead of deterring people from crime, brutalized them and incited to crime.

In this method of execution the victim stands or sits upon a trap-door in a scaffold built up ten or twelve feet from the ground. A noose formed by the lower end of a rope attached to a cross-beam above his head is placed about his neck. A black cap is pulled down entirely over his face and fastened around the neck. At a given signal from the officer upon the platform the executioner, usually stationed at some distance, pulls a rope which releases the trap and allows the victim to fall through the scaffold for several feet. The fall usually breaks the neck and causes instant death. Occasionally, however, the neck is not broken and then death occurs by strangulation. Once in a while the rope breaks and the victim must be taken back to the scaffold and the process repeated. Because of the slow death by strangulation and the occasional breaking of the rope, this method of execution is being supplanted by electrocution and other more certain and supposedly less painful methods.

Hanging was the usual method in this country until recently. New York was the first State to adopt electrocution and has been followed by fourteen other States which have adopted this means of execution. In Utah the condemned man may have his choice of being hanged or shot.

Since the widespread use of electricity, *electrocution* has been introduced. It is supposed to be less painful and not so distressing to those who are forced to witness the death. The culprit is fastened by straps to a firmly-built chair. Upon his head, which has been shaved, there is strapped one of the electrodes in a cap filled with a sponge soaked in salt water so as to make the contact close in order to prevent burning. The other electrode is fastened to the ankle. The current is then turned on at the switch by the executioner, left on for a certain number of seconds, and turned off. After a short interval it is again turned on and then turned off, this process being repeated as long as is necessary to produce death.

In recent years execution by *asphyxiation* in a lethal chamber has been introduced. Several states provide this method of execution. The victim is placed in an air-tight chamber to which pipes have been connected leading to a receptacle containing gas. After the victim has been placed within the chamber, the gas is turned on by the executioner. In Nevada since 1921 liquid hydrocyanic gas has been used. This causes instant death. While some of the public press strenuously objected to this method of execution as

barbaric, other papers defended it. Experience indicates that this method is probably the "quickest and most humane method of putting a human to death." In hanging, men are frequently conscious from seven to fifteen minutes after the trap is sprung, and in electrocution it is frequently necessary to shock a man three or four times before he is dead. In shooting executions unconsciousness does not always come instantaneously with the riddling of the heart, but with lethal gas unconsciousness is instantaneous and death practically so.²⁷

Beheading by the guillotine arose during the French Revolution. Beheading is retained as the method in France, still by the guillotine. This device is named after Dr. Guillotin, who invented it as a sure and practically painless method of execution. On September 25, 1791, a penal code was adopted which provided that the only mode of execution thenceforth should be beheading, a privilege formerly permitted only to the aristocracy, common criminals having been hanged. The invention of Dr. Guillotin was intended to be humane, since it reduced the pain of death "to a shiver." The device is something like a pile-driver with grooved posts, in the grooves of which runs a heavy axe which severs the head. In the block beneath is a curved depression in which the criminal's neck lies. The blade descending strikes the neck from behind and the head falls into a basket. At first the blade was set at right angles; later it was set diagonally in order to do the work better.²⁸

EXTENT OF CAPITAL PUNISHMENT

Capital punishment still remains as a penalty for criminals in most of the countries of the world. In the course of time, however, its application has been limited to the most serious crimes and other forms of punishment have gradually taken its place.

Capital Punishment in the United States. While at the time of the arrival of the English colonists in America the English laws for the punishment of criminals were unusually severe, over 200 crimes being punishable by death, the colonists did not adopt capital punishment for all crimes. In the New England colonies only twelve offenses were made punishable by death.²⁹ This number, which to-day seems exceedingly large, soon was lessened. In the latter part of the eighteenth century a movement began to limit the application of capital punishments to fewer offenses. Ohio, in 1788, and Pennsylvania, in 1794, restricted capital punishment to cases of murder

²⁷ *Literary Digest*, March 1, 1924, p. 17

²⁸ Wines, *op. cit.*, pp. 57-60

²⁹ Bye, *Capital Punishment in the United States* (Philadelphia, 1919), p. 2.

alone. Rhode Island in 1838 reduced capital crimes to murder and arson alone. This movement has gone steadily on until the death penalty has been abolished in twelve States, though recently restored in four of these, and its use is limited to murder alone in twelve more.³⁰ Two States in our country have five capital crimes and two others punish with death six crimes. Forty States retain the death penalty, but in thirty-three of these the court or jury may substitute for it life imprisonment.³¹ In six it is obligatory in first degree murder conviction. The Federal Government lagged behind a number of the states in reducing the number of crimes punishable by death. Federal law by 1892 had reduced capital offenses to treason, murder, and rape, but by 1937 had increased the number to six. That the sentiment of juries at the present time is against capital punishment is indicated by the fact that from 1911 to 1917 inclusive there was an average of only 100 executions in the whole of the United States each year.³²

After the World War, due to the apparent increase of violent crimes, four of the States of the Union restored the death penalty. The restoration was due to the theory, born anew of ignorance and hysteria, that only that penalty would deter from the crime of murder. Every comparative study made of the relation between the ratio of homicide to the presence or absence of capital punishment in a country gives a negative result. In spite of the knowledge available, hysterical legislators continue to resort to the death penalty as a means of checking violence.³³ It is possible that public reaction to the recent wave of kidnapping will lead some States to provide death for convicted kidnappers.

ARGUMENTS FOR AND AGAINST CAPITAL PUNISHMENT

In spite of the fact that the historical movement has been for the decreasing of capital punishment, there is no general agreement as to its value and necessity. Most penologists doubt its deterrent value. That it has been used in the past is no argument that it should be continued. On the other hand, that its use has become more limited is no argument against it. Whether it shall be continued or not must depend upon the observed effects on society of its use. Sound social reasons based upon experience alone can determine the ultimate outcome of the debate.

³⁰ Twenty-five foreign countries have abolished the death penalty.

³¹ Bye, *op. cit.*, pp. 5-10. See also Robinson, *Penology in the United States* (Philadelphia, 1921), pp. 243, 246, *The Prison Journal*, October, 1932, p. 21.

³² Bye, *op. cit.*, p. 58.

³³ Lawes, *Man's Judgment of Death* (New York and London, 1924); Calvert, *Capital Punishment in the Twentieth Century* (New York and London, 1927).

ARGUMENTS AGAINST THE DEATH PENALTY

1. *It is an irrevocable penalty.* Mistakes in judgment as to guilt are known to have happened. Experience shows that the evidence on which many men are convicted gives only probability of guilt. Unbalanced people will sometimes confess themselves guilty of crime of which they are quite innocent. An illustration of the unjust conviction of a man for murder is supplied by the case of Andrew Toth, who served twenty years of a life sentence in the Western penitentiary of Pennsylvania for a crime which he had not committed.³⁴ If the death penalty is retained, this difficulty must be frankly faced.

2. *It is retributive in nature.* This motive in the treatment of the criminal has lost its power in most reflective minds and should vanish as a means of punishment. However, we must face the fact that the greater the weight given to social protection the less is treatment of the criminal retributive. Under other motives than revenge, capital punishment might not be retributive. It is conceivable that it might be visited upon a criminal not as a retribution, but as a means of protecting society by eliminating the criminal.

3. *It is not reformatory.* As a matter of fact capital punishment indicates the impossibility of reformation. But theoretically if it is possible to reform a man no avenue to reformation should be closed. Death certainly prevents reformation. Who can say with certainty whether the possibility of reformation no longer exists for any man, no matter how hardened? The methods of reformation have not yet been well enough worked out and experience with any method of reformation is too limited to make it possible for us to say that reformation is impossible. Therefore, if capital punishment is retained, the theory of probability exercised upon large numbers of cases of criminals who have been subjected to reformatory treatment must be used as the justification of capital punishment. Even this method, however, does not make certain that in any particular case the one condemned is incorrigible.

4. *Capital punishment is not deterrent in effect.* It is pointed out that there are no more crimes in the states in which the death penalty has been abolished than in those in which it is to be found. Experience, therefore, even though it be limited, seems to indicate that the death penalty is not necessary for social protection. However, until the experience of states with capital punishment and those without the death penalty can be more carefully studied, we cannot be certain that there may not be other conditions that explain the equality of criminality in the two.³⁵

5. *Capital punishment diminishes the certainty of punishment.* It is the common experience that juries often will not convict when they know that the penalty is death. Consequently, in those cases the death penalty is the excuse for acquittal.

³⁴ *Journal of Criminal Law and Criminology*, II, 48 (September, 1911), Borchard, *Convicting the Innocent* (New Haven, Conn., 1932).

³⁵ Vold, "Can the Death Penalty Prevent Crime?" *The Prison Journal*, October 1932, p. 4, Hoffman, "The Homicide Record for 1925," *The Spectator*, April 1, 1926.

and results in the escape of the criminal from social treatment. It is urged that if capital punishment is done away with entirely juries are more likely to convict and thus society is protected in greater measure

6. *It violates our humanitarian sentiments* There can be no question that with the development of pity and kindness in the last 200 years, and with the growth of democracy, men recoil with greater horror than ever before from capital punishment. While we should not waste sentiment upon the criminal himself, meanwhile forgetting the suffering he has inflicted upon others, there is a growing belief that we will protect society as well and brutalize ourselves less if we treat the criminal in other ways. Moreover, some one individual must spring the trap, turn the switch, turn the valve which lets in the gas, or fire the gun. Society places upon this individual the brutalizing task of taking a life which no one of its members wishes himself to take. Men can take life in self-defense or in the heat of passion and have a relieving sense of justification, but to take life in cold blood causes all the humanitarian sentiments developed in thousands of years to revolt.

7. *It is the most cold-blooded and deliberate kind of murder* It is urged that the executioner has no passion which justifies his conscience in the performance of such a deed. It is, however, a question as to whether the man who pulls the trap may not feel that he is doing a public service which is even greater because of its disagreeableness than that of the policeman who shoots the fleeing murderer or thief.

ARGUMENTS IN FAVOR OF THE DEATH PENALTY

Against these considerations there are others urged in favor of the retention of the death penalty. It is not necessary to apologize for the brutality of capital punishment in the past in order to justify its continuance to-day. It is urged that.

1. *It is the only method of eliminating the hopeless enemy of society* Escape from prison, commutation of sentence, and pardon are ways which criminals, helped by their friends, have found convenient for escaping life imprisonment. There is no question that in actual practice life imprisonment is not always what its name signifies. Many are the cases in the operation of criminal law in the United States in which the criminal, sentenced to life imprisonment, is released or escapes and again preys upon society. However, are we not begging the question when we assume that any person is a "hopeless" enemy of society? In the present state of our knowledge all we can do is to rely upon a careful study of the criminal's antecedents, his previous history, and his mental and physical condition and arrive at a conclusion as to the probability of his hopelessness. If we could be sure that he is incorrigible, this argument would have great force. No prisoner under our modern methods of prison labor supports himself and pays for the expense

which he has caused society. Why, therefore, should society support him with the constant menace of his release and subsequent depredations?

2. *It deters as no other form of punishment does* It is argued that hardened criminals are always willing to take a chance on escape or pardon. They fight capital punishment to the utmost. Garofalo insists on the deterrent value of capital punishment.³⁶ On the other hand, Professor Liepmann, Professor Sutherland, and Professor Bye think the deterrent factor negligible.³⁷

3. *Its brutalizing effect is an assumption not proved* It is contended that if capital punishment is properly carried out, instead of brutalizing society it satisfies the sense of justice and provides social satisfaction and a sense of protection.

As for its brutalizing effect upon the executioner, doubtless that can be prevented by devices which will either make the criminal his own executioner, such as a lethal chamber in which his own weight on the floor for a certain number of minutes would turn on the gas or the electricity, or a time device which after a certain time would automatically execute the man. In these ways the relation to the victim of those charged with the execution would become more remote. It is a question, however, whether even such remoteness would not affect unfavorably those who had anything whatever to do with the execution.³⁸

4. *It is the only means whereby society is relieved of the support of those who continually war upon it* It is pointed out how great is the expense of maintaining the irreformable criminals who prey upon society. The only justification of this great expense is that to eliminate the criminals would do more damage to society than the damage involved in the chance of their escape or pardon and the cost of their support. We have no way of balancing these two items in the account so as to enable us to make a decision on this point. There is no question, however, that the serious and seemingly hopeless criminals are both a menace and a burden to society.

5. *It is a positive selective agency to wipe out the stock of irreformable criminals.* Some contend that the use of capital punishment in former times explains the low rate of serious crime in Great Britain at the present day. We are not certain, however, that this is the explanation. Killing off the more hopeless criminals would probably have some effect upon the degenerate stock from which many of them come. Since most of the criminals are young men, capital punishment would prevent their having families and so eliminate the stock. Therefore it is probable that, applied rigorously enough, capital punishment would materially lessen the enemies of society. It is a question, however, whether public sentiment

³⁶ Garofalo, *Criminology* (Boston, 1914), pp. 378-381.

³⁷ Liepmann, *Die Todesstrafe* (Berlin, 1912), pp. 15, 126-177, 190; Bye, *op. cit.*, pp. 65, 91-93, Sutherland, "Murder and the Death Penalty," *Journal of Criminal Law and Criminology*, February, 1925, pp. 522-529.

³⁸ A friend of the writer, who was a prison warden and who had charge of a condemned man hanged in the prison upon a gallows, but who had nothing to do with springing the trap, felt contaminated by the indirect associations he had with the execution.

would permit any such wholesale elimination as would be necessary to accomplish this purpose. It is also claimed with a good deal of force that life imprisonment accomplishes practically the same purpose. Garofalo has suggested absolute elimination of those murderers which he calls the extreme, typical criminals—men who are destitute of moral sense and hence of the sentiment of pity even in its lowest terms.³⁹

There is an increasing amount of evidence that certain individuals are by nature anti-social. It seems probable that any measures taken with some of these for their education for social life are bound to fail. Therefore in the light of our present knowledge it would seem desirable that capital punishment, if retained, should be reserved for those whose physical and mental characteristics and whose histories point to their incorrigibility and for those who by long experience in correctional institutions have shown themselves to be irreformable. It must be admitted that the methods of ascertaining with certainty their incorrigibility are still inadequate. Nevertheless, society would probably be less exposed to danger if it eliminated the worst of the offenders than if it risked their escape or pardon by life imprisonment. This proposal, however, would limit capital punishment to a very few, and these should be selected by the best means known to psychiatry and sociology. With the necessity of having these findings approved by a jury or a court, it is not likely that reformable offenders would be destroyed.

In this connection it must not be forgotten that present tendencies among penologists are toward discovering and placing in institutions for their care the feeble-minded, psychopaths, paranoiacs, and other individuals dangerous by reason of their mental abnormality. These would be shut off from society. In many cases, if this were done early, they would not be a menace to society. This method would not only wipe out that stock but would also prevent some of them from developing criminal habits. Such a procedure effectually applied would leave only the confirmed criminal of sound mind who is dangerous to society, and who cannot be kept in prison, to be exterminated by capital punishment.

QUESTIONS AND EXERCISES

1. Does the popular demand for capital punishment depend primarily on the theory of retaliation, expiation, deterrence, or the protection of society?
2. If you were condemned to die, which method would you prefer? Why?
3. Why, then, does society use other methods?
4. Compare the figures on homicide in the census report on *Mortality Statistics* in

³⁹ Garofalo, *op. cit.*, pp. 372, 373

a State which has capital punishment with those from one which does not have it. Select States in the same general region and with about the same distribution of urban and rural population

5. Do you think Loeb and Leopold should have been hanged? Defend your position.

CHAPTER XVII

PENAL TRANSPORTATION

FROM time immemorial banishment of offenders has been a common practice. Even in tribal societies the kin-wrecked man was not an unknown phenomenon. In the classical nations of antiquity banishment of political opponents was frequent. Among the Greeks Cleisthenes introduced the practice for prominent persons in 509 B.C. Alcibiades finally succeeded in abolishing it in 416 B.C. Among the important Greeks who were banished were Miltiades, Themistocles, Aristides, and Alcibiades.

The Romans also practised banishment for important political offenders, and there is some evidence that they transported criminals to the distant parts of the Empire for work in the mines. Transportation as a modern method of punishment, however, had its origin in England.

ORIGIN OF THE ENGLISH TRANSPORTATION SYSTEM

Vast changes went on in English economic and social life in the sixteenth and seventeenth centuries. The discovery of North America, the war with Spain in the days of Elizabeth, the increase in the volume of currency, the development of foreign trade with the consequent stimulation of industry at home, and the Reformation were factors in these changes. The most important economic changes which broke up the old status of society in England were the enclosures, the growth of commerce, and the increase of towns. With the development of the manufacture of woolens, the old manorial system of farming broke down. From the middle of the fifteenth century to the close of the sixteenth these various changes in English life were most evident. Politically, intellectually, and religiously the nation was in a ferment.¹

Consequent upon the break-up of the manor and the increase of commerce occurred an increase in the size of towns. Ashley is of the opinion that for the period from 1350 to 1550 "on the whole there was a steady and constant growth of wealth in the civic communities."² Into these towns drifted many of the displaced tenants who formerly had an established position on the medieval manor. Poverty among them was rampant, and crime demanded the attention of the authorities.

¹ Cheney, *Industrial and Social History of England* (New York, 1906), p. 141.

² Ashley, *op. cit.*, Part II, pp. 50, 51.

Then there were social and political changes which increased the amount of crime. The old manorial customs and the courts of the manor had for the most part taken care of the infractions of customary discipline in the old days. With the break-up of the manor it became necessary to pass numerous laws in the endeavor to keep men in their old relationships. The Reformation had disturbed the social equanimity of the times. Moreover, many Jews had found England a profitable country in which to live. Elizabeth's Act of Uniformity was an endeavor to bring about religious unity and bore heavily upon Jews, Catholics, and Nonconformists. This endeavor of the government to unify the various cultural elements of the population resulted in an increased number of law-breakers. Furthermore, in the endeavor to raise revenues for the government a large number of new taxes were invented, and prosecutions for the evasion of these taxes became frequent. As a result of all these things there was stirring in England vast discontent growing partly out of the wretchedness of certain elements of the population and partly out of the growing spirit of democracy which all these cultural movements had incited.

As the result of England's foreign trade and developed agriculture, an increase of population had occurred. At times of economic crisis, however, there was not the means of feeding the people, and there was consequent suffering and criminality. In connection with that fact is one of even greater significance, namely, the breakdown of the old religious restraints upon conduct.

Under the stress of all these conditions the number of criminals had increased so greatly that the old local jails had become inadequate to house properly the debtors and those who were in detention for trial. Consequently, conditions in the prisons had become terrible beyond description.

Furthermore, the old methods of punishment proved to be ineffective in the conflict with crime. Mutilations, whipping, the pillory, stocks, and other secondary methods of punishment were inadequate to cope with the growing problem.

Thus, the growth of crime, the inadequacy of the old methods of punishment, and the unsuitability of the old local jails as places of punishment created a situation which demanded that some new method should be tried.

Just at this time the new colonies in America were engaged in a desperate struggle to conquer the wilderness, and labor was greatly in demand. It was this situation which gave rise to the first importation of Negro slaves. Moreover, the government was engaged in all kinds of schemes to promote emigration to the colonies.³ Hence the question arose as to whether England

³ Gillin, *The Dunkers. A Sociological Interpretation* (New York, 1906), pp. 97-99.

could not supply the needed labor and at the same time be rid of law-breakers by transporting them beyond seas.

HISTORY OF TRANSPORTATION IN ENGLAND

In common with other nations of the world England had a precedent for the system of transportation in her practice of outlawry. The outlaws of English romance, like Robin Hood, were men who had fled from justice. Their chattels were forfeit to the king, and their lives could be taken by any one who might chance upon them. Even their children were outlaws. They could be restored to civil life only through the king's pardon.⁴ Magna Carta provided that no free Englishmen should be exiled. This provision, however, was evaded in many ways. Before the abolition of the right of sanctuary a free pardon was granted to criminals in sanctuary on condition that they quit the realm, but with the threat of hanging should they ever return. Moreover, many of those who had passed through the ordeals and, prior to 1530, those lay criminals who had left the sanctuaries under the church's protection were allowed to abjure the realm.⁵ In time this policy, instead of being permissive, became positive. The earliest case is said to have occurred in 1619 as a mere arbitrary shipment of undesirable citizens to the plantations.⁶ Advantage was taken of some of the clauses of the vagrancy act passed during the reign of Elizabeth, which empowered justices in quarter sessions to banish offenders and order them to be conveyed into such parts beyond the seas as should be assigned by Her Majesty's Privy Council. James I ordered a hundred dissolute persons to be sent to Virginia.

Penal transportation first received legislative sanction during the reign of Charles II. For example, Act 18 of Charles II, Chapter 3, legalized the transportation to northern America of felons under sentence of death. They were, however, to have the choice between hanging and transportation.⁷ A systematic development of the system is to be found in the legislation of George I in 1718.⁸ This act, ostensibly concerned with supplying the ill-stocked labor market of the plantations, expressly authorized the transporta-

⁴ For details see Ives, *A History of Penal Methods* (London, 1914), pp. 97-100; "The Magna Carta," Section 39, in Lee, *Source Book of English History* (New York, 1905), p. 175.

⁵ Wines, *Punishment and Reformation*, Revised Edition (New York, 1910), p. 168; Ives, *op. cit.*, pp. 100, 101.

⁶ Wedderburn, *Observations on the State of English Prisons* (1793), p. 5, quoted by B and S Webb, *English Prisons under Local Government* (London, 1922), p. 44, note.

⁷ Wines, *op. cit.*, p. 168.

⁸ Ives says the act was passed in 1717 instead of 1718 (*op. cit.*, p. 109).

tion of all felons sentenced to a term of imprisonment for not less than three years.⁹

Under the legislation of the early Georges prisoners were turned over to contractors who agreed to transport them to America without cost to the government on condition that the contractor had the right to sell their services for from seven to fourteen years to planters in America. The number of criminals having become so numerous that the local prisons were clogged with them in 1767, an act was passed providing for the speedier and more effectual transportation of offenders. Even these measures did not satisfy the demand for cheap labor in the colonies. An extensive kidnapping business grew up in England to provide bond-servants for the colonists.¹⁰

This process of exporting criminals to the American colonies continued uninterruptedly until the outbreak of the American Revolution. The result upon the criminals transported to America seems to have been rather good. Says a recent writer:

“The system seems to have met, in certain respects, with some success. The new associations, the salutary agricultural labour, the strict supervision exercised, rendering impossible the continuance of vicious, nefarious practices, combined to effect a reformation in the case of even some of those who had before been the most abandoned criminals. Many of them, after the expiration of their term, became farmers and planters on their own account, and came to lead respectable lives, and in some cases even rose to wealth. The natural abilities of thieves, burglars, forgers, false coiners and other ‘clever enemies of society’ were diverted to simple and more useful purposes; and their labour, especially in Maryland, was found to be such a valuable asset that arrangements were made to convey them without any cost to the government, which had before allowed five pounds a head.”¹¹

The Hulks. When transportation was stopped by the American Revolution, England had to resort to various devices to care for her criminals. The local jails in which they had been kept after sentence until they could be transported now became overcrowded.¹² As a temporary device hulks moored along the coast of England were provided by an act passed in 1776 in which the prisoners who could not be transported should be kept. These were worse even than the local prisons, “being crowded, dirty, and verminous, with the men and boys all in irons, often in double irons, for greater security. Those who were able to do rough work were employed on shore on various

⁹ Wines, *op. cit.*, p. 162, Webb, *op. cit.*, p. 44, note, Ives, *op. cit.*, pp. 108-110.

¹⁰ Ives, *op. cit.*, p. 113.

¹¹ Phillipson, *Three Criminal Law Reformers* (New York, 1923), pp. 174, 175.

¹² Ives, *op. cit.*, p. 124.

dockyard tasks, such as digging and dredging, and worked the same number of hours as free laborers."¹³ There was the usual monotony and stagnation of prison life, while association together led to contamination. The only method of keeping the convicts in order in these hulks and at work was the lash. For almost thirty years the hulks were used as the places of confinement for prisoners who had formerly been sent to America. In fact, they were not entirely abandoned until 1858.¹⁴

Australian Transportation. Out of this situation grew the experiment of transporting criminals to Australia. In 1770, Captain Cook had discovered Australia. Remembering the ease with which criminals were disposed of earlier by transportation to America, many writers suggested that this far-off land of Australia would make an ideal place for a convict colony. The first fleet of convict ships, containing 1,030 criminals, sailed for Australia in May, 1787, and landed at Sydney after an eight months' voyage.¹⁵ This early settlement at Sydney did not greatly prosper. The surrounding country was not fertile, the convicts knew little about farming, and there was no one among the guards competent to instruct them; hence they lived largely upon rations sent out from England. The settlement, therefore, was composed of two elements, convicts and the guards sent to keep them in order. Realizing after a time that a respectable element was necessary in such a community if the best results were to be secured, a few free families were encouraged to emigrate. These, however, were swamped in the mass of convicts, shipload after shipload of whom continued to be sent out year after year.

The second fleet landed in Port Jackson in June, 1790. It was in charge of contractors, and the sufferings of the convicts are described as horrible.¹⁶ By 1791 the time of some of the convicts had expired and the governor commenced the practice of giving thirty acres to each single man and fifty to each married man, with ten more acres for each child. He also gave them tools, seeds, and rations for eighteen months at the expense of the government. Moreover, about 1793, there originated the practice of assigning some of the convicts to settlers. The free emigrants found in these prisoners a cheap labor supply. They were allowed to take a certain number proportionate to the amount of land they held. As a result of this system of assign-

¹³ *Ibid.*, p. 125

¹⁴ *Ibid.*, p. 126. For a good brief account of English penal transportation after the American Revolution see Gillespie, "The Transportation of English Convicts after 1783," *Journal of Criminal Law and Criminology*, XIII, 359-381 (November, 1922).

¹⁵ For a description of the voyage see *The Voyage of Governor Phillip to Botany Bay*, etc. (London, 1789).

¹⁶ For details see Ives, *op. cit.*, pp. 131, 133

ment to free settlers, the worst prisoners remained in the hands of the government to be cared for in other ways, while the best ones went into the families of the free citizens of Australia and in course of time found themselves admitted to comparative freedom on what was called "ticket-of-leave." During this period and for these assigned convicts the results seem to have been good. They established themselves in civil life, and many of them found new opportunities of which they made good use. Those who remained in the hands of the government were used in building government works in Sydney and later in other parts of the continent.¹⁷

As the number of emancipists, as those convicts were called who had served their time and had been freed, increased, a problem arose in Australia which had not appeared in America. In America the convicts, being few, were absorbed in the population. In Australia, on the other hand, because of the danger of the settlers being outnumbered by the emancipists, a strong hostility arose among the free emigrants against the discharged convicts. They refused to fraternize with the convicts who had served their time. The cleavage between the two classes grew wider, and an agitation arose in Australia to stop transportation. This movement, followed by a league of the free settlers, was in full blast by 1835.¹⁸

So violent was the opposition that finally the government decided in 1837 to cease assigning convicts to private persons and in 1840 prohibited the sending of convicts to Australia. That diverted the convict stream to Van Diemen's Land. Hitherto convicts had been sent to this island but not in large numbers. There the discipline had been severe from the beginning. Now, with the coming of other thousands, the executive in authority was swamped. To meet the situation a probation system was devised. The convicts passed through a series of stages, viz., strict imprisonment, labor in government gangs scattered about the country, a pass authorizing them to seek work within certain geographical limits, ticket-of-leave providing a wider range in which to find employment, and conditional pardon followed by restored liberty.

Both in the earlier period in New South Wales in Australia, and later in Van Diemen's Land, when the number of convicts became greater than the country could absorb and the government had to handle those who could not find places with individual settlers, the results were very bad. Those in the hands of the government earlier were formed into road parties, chain-gangs, or penal settlements. The road parties, as the name implies, were kept in the vicinity of towns or marched about the country doing the

¹⁷ Ives, *op. cit.*, pp. 138-140.

¹⁸ *Ibid.*, p. 141.

public work that the government could devise. From these road parties many of the escapes occurred which resulted in the gangs of "bushrangers" who became a terror to the whole country. In the chain-gangs discipline was far harsher, the work was hard, and the custody close. The men were confined in barracks or stockades and hulks between sunset and sunrise and were subject to numerous floggings. All wore heavy leg-irons. Those whom the road parties and the chain-gangs had failed to control effectively were sent into the penal settlements, which proved to be terrible institutions. Severe repression, the association of the worst criminals England produced, led to undesirable conditions which excited the condemnation of all visitors from England. Reports by such men as Archbishop Ullathorne, Collins, and others finally awakened the best minds of England to the evils of transportation.¹⁹

At home such men as Jeremy Bentham and Archbishop Whately thundered against the system²⁰ Moreover, in Australia itself a tide of remonstrance against transportation steadily rose. In 1835 Judge Burton raised a loud protest and in a charge to the grand jury of Sydney intimated that transportation must cease.

Furthermore the cost of the colonial convict establishments was so great, amounting to more than two and a half million dollars per annum, that it led to agitation for its abolition on the basis of expense²¹

Thus the failure of the Australian transportation system may be laid to the enormous number of convicts sent to a sparsely populated country, to the evils which grew up in the penal settlements in which the worst characters were incarcerated, to the terrorism inspired by bands of escaped convicts, to the cost of the system, and to the conviction that as practised it would not lead to the reformation of a large percentage of the criminals.

THE DECLINE OF PENAL TRANSPORTATION IN ENGLAND

In the long history of transportation in England advocates and opponents marshaled many arguments for their respective points of view. In the light of the newer penology many of these arguments seem strange to us to-day,

¹⁹ For details of the iniquities of the penal colonies see Ullathorne, *The Horrors of Transportation Unfolded to the People*, Clarke, *For the Term of His Natural Life* (1875), and his *Stories of Australia in the Early Days* (1897). For a brief notice see Webb, *op. cit.*, p. 44, note 1, Ives, *op. cit.*, pp. 146-170; *Adventures of an Outlaw* (New York, 1929), *Martin Cash, The Bushranger of Van Diemen's Land in 1843* (Hobart, Tasmania, 1879).

²⁰ Bentham "Principles of Penal Law," in *Works*, edited by Bowring (Edinburgh, 1843), I, 490, Whately, *Thoughts on Secondary Punishments* (London, 1832), pp. 53-103.

²¹ *Encyclopædia Britannica, Ninth Edition*, XIX, 751.

but they can be readily understood in the light of the theories of punishment then dominant.

Jeremy Bentham was the most indefatigable writer against transportation of that time.²² His collected works bear abundant evidence of his interest in the subject of the treatment of prisoners and his inveterate hostility to transportation as compared with a penitentiary system.²³

In his "Principles of Penal Law" Bentham speaks of the good and bad effects of transportation to America, to Botany Bay, and to New South Wales. He thinks the selling of the criminals to masters in America by the contracting ship-owners who transported them had a reformatory effect upon the criminals because they were in families where they had thrown about them influences which led often to reformation. At Botany Bay and New South Wales this element was lacking, and he condemns the system in the most unsparing terms. He thinks the system in any case lacks all the elements of a good penal system and has every element which a system should not have. It violates every object of punishment which he sets up—exemplarity, reformation, incapacitation, compensation or satisfaction to the injured party, and economy.²⁴

In his "A View of the Hard-Labour Bill" Bentham argues for prisons as against transportation. His arguments are.

²² Whately, *Thoughts on Secondary Punishments* (London), p. 201. The strange thing in the discussions of transportation by both Bentham and Archbishop Whately is that transportation is condemned for resulting in the establishment of those transported in the new land in self-supporting and even comfortable positions. This condemnation is on the ground that the reports of such fine results to the transported get back to England and make the much underpaid workman wish to commit some crime for which he can be transported to the same glorious country. Both are laboring under the principle that one of the prime purposes of punishment is deterrence. Therefore, if transportation results in the reformation of the transported and in his economic rehabilitation, so that he has a more comfortable life than his fellows left in England, it is a bad kind of punishment. On the same reasoning there are people to-day who argue that the conditions in penal institutions should not be made too good, else the people outside will wish to break in. On that same premise we should not attempt in our prisons to give a man an education or teach him a trade, for if we do, he may when he gets out be so much better off than if he had never been in prison that other poor people outside, seeing the advantages provided him in prison, will commit crime so as to share such privileges themselves. The real trouble was that the conditions were so dreadful in England that they were making criminals, while the conditions in New South Wales were so much better for those who had finished their period of detention there that they settled down to normal and successful life. They were not criminals by nature but had been forced by the evil conditions in England to commit crime. Those arguments, however, led to the terribly repressive measures adopted in Australia and Van Diemen's Land which from considerations of humanity led to the condemnation of transportation.

²³ See his "Panopticon vs New South Wales," *Works*, Bowring Edition (Edinburgh, 1843), IV, 173-248, and his "Principles of Penal Law," *Works*, Vol I, Book V, Chap 2

²⁴ Bentham, *Works*, Bowring Edition, Vol I, Book V, Chap 2

- (1) In a point of proportion transportation is unequal.
 - a. Some can buy off the servitude incident to transport by paying their passage fare.
 - b. No two transported suffered the same—one might be glad to go and another hate to go
- (2) It is "unexemplary" What they suffered is not known to the people for whom the example is designed.
- (3) It is "unfrugal." There was great waste of life in the mode and of expense in conveying them
- (4) Disables the offender from committing crime less than imprisonment because easier to return from banishment than from prison
- (5) Does serve for reformation by means of the servitude involved, but not so well under a private master whose object is profit as under imprisonment at hard labor under the united wisdom of the nation with reformation as an express purpose.²⁵

The transportation system, which was started on the theory that by sending criminals to an unsettled land in the course of time it would be possible for them to provide for themselves and at the same time develop a new colony, proved to be a disappointment. In 1802 Bentham called the attention of Lord Pelham to the fact that in the course of ten years the system had cost upwards of a million, and he estimates that by that date (1802) probably a little less than a million and a half pounds sterling.²⁶ One authority gives the cost of these colonial convict establishments in Australia as half a million pounds per annum. Bentham argued that of the million and a half pounds which he thought the system had cost in 1802 a million might have been saved by a penitentiary system at home.

Bentham pointed out that in every single respect transportation failed. While his argument was doubtless too strong for the facts, the hoped-for benefits of the transportation system were not realized. It reformed only a few, and even in the early period when the convicts were released and scattered among the free settlers it did not prevent some of them from returning home worse than when they were sent. It led to the development of criminal communities in a new continent which England was desirous of bringing to civilization; it caused untold miseries to the free settlers in Australia; and it was an enormous expense. Practically the only good things which came out of the experiment were such devices as ticket-of-leave, grading of prisoners, and the mark system, which afterwards entered as elements into the reformatory system of Elmira.

²⁵ *Ibid.*, IV, 6, 7

²⁶ See his "Panopticon vs New South Wales," *Works*, IV, 177

As a result of costly and unfortunate experiences and the constant agitation against it in England as well as the pronounced hostility of the free settlers of Australia, transportation to New South Wales was suspended by administrative order in 1840 and by legislative act in 1847 and 1848. The word disappeared from the statutes in 1857 but in practice continued under the name of "probation" until 1867. Thus ended an experiment in England which promised great results. Owing to her failure to understand the importance of careful supervision and the necessity of scattering the deported criminals in small numbers over a wide territory, with careful supervision by capable men, the experiment failed. It is possible that it might have failed under the best of circumstances. Under the actual circumstances failure was inevitable. Says Ives concerning the Australian transportation:

"Thus we need not altogether blame transportation for the fell deeds which prison officials did far away from freedom. There was much that was good and healthy in transportation, but the guilt and stain round the rocks of those dreadful prisons will hang and linger in the memory of mankind till the ocean of time, which is vaster than the Pacific, engulfs them, and sweeps them, and us, away."²⁷

TRANSPORTATION IN FRANCE

France tried the same plan of treating her criminals, beginning the practice in 1791 when persons convicted a second time were transported. Later the law included vagrants. Madagascar was made the penal colony for France in the second year of the Revolution. The Napoleonic wars prevented the carrying out of this design. The project, having never been carried out, was given up when the old code was displaced by the Code Napoléon in 1810. For a short time following the Reign of Terror in 1851 it was reestablished by an unconstitutional ministerial decree, Guiana and Algiers being named as the colonies. In the following year, however, the decree was modified and made to apply only to Guiana. In 1854, a law was passed legalizing transportation as a substitute for hard labor in the prisons (*bagnes*). Following this, New Caledonia, in the Southern Pacific nearly a thousand miles east of Australia, was made a penal colony in 1863.

The colony in Guiana has been a failure. The health conditions there are so trying to white men that from 25 to 32 per cent of those transported died annually.

The most horrible conditions existing in that penal colony have been revealed the last few years by visitors.²⁸ With the coming of the radicals

²⁷ Ives, *A History of Penal Methods* (London, 1914), p 170

²⁸ Baitz, *The Horrors of Cayenne* (New York, 1930), Niles, *Condemned to Devil's Island* (New York, 1928), and Free (New York, 1930), Gillmore, "Dry Guillotine," *Asia*,

with Herriot at their head it was hoped that the colony would be abandoned, but the shift of political parties in France soon destroyed that hope.²⁹

The colony at New Caledonia, opened as a penal colony in 1864, has been a failure. Since 1894 convicts have not been sent from France to New Caledonia.³⁰

TRANSPORTATION IN RUSSIA

Exile to Siberia for Russian political prisoners has long been known. Dostoeffski's *House of the Dead* and George Kennan's *The Siberian Exile System* have pictured the terrible conditions in these penal colonies.

Even under the Soviets there are isolation camps at Archangel and in Siberia. Certain of them are under the Gay Pay Oo (political police). Terrible stories of the treatment in these colonies are told, but no foreigner is ever allowed to visit them.

As one reads to-day the description of any of these penal colonies he is led to wonder at man's inhumanity to man. The long marches from European Russia to Siberia in the early days were no less fatal to large numbers of the convicts than the ship passage to Australia from England. One of these Russian penal colonies was on the island of Sakhalin, captured by the Japanese in the war between Russia and Japan.³¹

TRANSPORTATION AS A MODERN PENAL SYSTEM

In spite of this history of the failure of transportation in three modern nations there are still some who believe that, properly handled, transportation has penal value. Certain of the European penologists favor it, at least for certain classes of criminals. Aschaffenburg thinks that deportation would suit well the few energetic and vigorous persons among criminals but that it would not be adaptable to the large majority. However, he prefers penal colonies in the homeland where prisoners can be employed in draining swamps and doing other public works upon which it would not be advisable to employ ordinary workmen because it would be too difficult to supply them with shelter and food and the pay would be too small.³²

February, 1925, p 113; Halliburton, "De Profundis," *Ladies Home Journal*, November, 1929, p 30, Allison-Booth, *Hell's Outpost* (New York, 1931)

²⁹ "Extinguishing an Island Hell," *Literary Digest*, October 11, 1924, p 32; Wales, "Modern Torture Ship Bears 680 French to Exile," *Chicago Tribune*, March 31, 1926; Shiver, "French Convict Ship Sails with 675 for Guiana," *Chicago Tribune*, November 8, 1929

³⁰ Mossé, *Les Prisons* (Paris, 1926), p 203.

³¹ See Dostoeffski, *The House of the Dead*, Everyman's Library, No 533 (New York, 1916). The practice of deporting political prisoners to Siberia and Archangel is not discussed here, since the deportees are not ordinary criminals

³² Aschaffenburg, *Crime and Its Repression* (Boston, 1913), pp 267, 268

Garofalo, the Italian penologist, is one of the chief modern advocates of transportation, but he too would limit it to certain classes of criminals. With his belief that elimination is the only satisfactory method of handling what he calls the real criminal and with the prejudice which exists against capital punishment as a method of elimination, he suggests transportation as one means of eliminating certain criminals who cannot be reformed in their old surroundings. He thinks this method should be employed to eliminate from society professional thieves, vagabonds, and habitual criminals in general. He says: "Only in these entirely new conditions of existence will their adaptation to the social life become possible, a conclusion which is borne out by numerous historical examples." He also advises it as a method of treating offenders guilty of serious physical or moral cruelty, when the crime has appeared as an isolated instance in the life of its author and does not prove an absolute unsociability on his part. He suggests it also for active offenders who lack the moral sense and have a persistent instinct of cruelty, which sooner or later will lead to murder, and who have been repeaters. He suggests that the islands of Oceania be thus employed. He says Russia has an abundance of room in Siberia for such offenders.³³

Another European penologist who argues for transportation is Tarde. He says:

"The being sent abroad, the complete change in climate and way of living impresses upon many persons who have been deported the moral stirring up which disposes them toward a change of heart, and the power of example is such that, if the new surroundings into which they are thrown are honest or practically honest, they are there regenerated in all seriousness"³⁴

He thinks, however, that its success is dependent upon the right kind of leaders and the gradual release and mingling of the convicts with honest people.³⁵ He adds, "In spite of all it has been possible to say in its favor, transportation has serious defects. A paradise hoped for by the worst criminals, a hell feared by the best ones, it is not in the least exemplary or intimidating. It cannot compare, for the sequestration of dangerous and incorrigible malefactors, with a good house of detention upon the mainland, and one can, one should in fact, inquire whether, when it does act as a regenerative influence, it does not do so at a far higher price than it would cost to form a well thought out organization of conditional liberation upon the

³³ Garofalo, *Criminology* (Boston, 1913), pp. 220-225, 387, 410 (Copyright by Little, Brown and Co., 1913. Reprinted by permission)

³⁴ Tarde, *Penal Philosophy* (Boston, 1912), p. 208 (Copyright by Little, Brown and Co., 1912. Reprinted by permission)

³⁵ *Ibid.*, pp. 209, 510, 516.

national territory, a thing everywhere at the present time being attempted and made a study of. Applied under the name of 'banishment' in the case of incorrigible petty delinquents, it has another disadvantage. In colonies practically the only work is agricultural labor. . . ."

"Furthermore, transportation or banishment can never be anything more than a provisional expedient," because people will not endure other people sending them their convicts³⁶

Judging transportation by its history, we are compelled to say that as a penal system it is a failure—a failure, however, which may be due to improper organization and administration. It is probable that if a country were willing to spend the money and able to find the proper administrators, transportation could be made to succeed. Under those conditions, however, it is probable that a penal colony in the home country would serve as well. Entirely aside, however, from the practicability of transportation, there is a theoretical consideration which ought not to be overlooked. The objections of the free colonies of America and Australia to the settlement of their land by criminals must not go unheeded. Each country should deal with the prisoners it produces and not rid itself of the problem by inflicting these criminals on some other people.

Moreover, historically penal transportation has been used for the worst of the criminals. The Philippines have proceeded on the other basis. Only those who have proved themselves amenable to correction in the prisons at Bilibid or San Ramon are allowed to go to the colony at Iwahig on the island of Palawan. It has been a decided success.³⁷

That penal transportation on the whole has been a failure is shown not only by the earlier experiments in Australia but also by most of those still in existence. That in the Philippines is an exception. Heindl has shown that the penal settlement on the Andaman Islands for Indian criminals and that of the French in New Caledonia have failed. The failure is registered in three items. (1) There is a greater mortality of those sent to penal colonies than of those sent to prison; in the Andamans the rate was 14.5 per cent as compared with 7 per cent in the prisons of India. (2) The expense is greater. An Indian convict costs the government above his earnings sixty rupees; one in the Andamans, 100 rupees. (3) The released convicts fail to become settlers. Of 60,000 which had been sent to the Andamans when Heindl visited them, 600 free colonists remained. Of the 600 only 279 earned their own living, and of these only 149 were farmers. He found

³⁶ *Ibid.*, pp. 521, 522

³⁷ See Gillin, *Taming the Criminal* (New York, 1931), Chap. II.

only a small proportion (1 per cent) permanently settled in New Caledonia.³⁸

In view of the difficulties usually involved in penal transportation—of finding new unoccupied lands in which there are no free settlers to object, of obtaining competent administrators, of exercising careful supervision by the central penal authorities, and of the expense usually involved in such a system of handling prisoners—transportation is not to be recommended save in exceptional circumstances and then only as a stage preparatory to return to free society.

QUESTIONS AND EXERCISES

1. Outline the origin of the English penal transportation system. (a) to the colonies in America and (b) to Australia
2. What were the results on the character of the transportees to America? to Australia? Explain the reason for the difference.
3. Give the arguments against transportation which finally led to its abandonment as a penal policy in England.
4. Why cannot penal transportation be defended as a modern method of treating the criminal?
5. What lessons were learned from the experience with penal transportation in Australia?
6. Why has the Philippine system of penal transportation proved to be so much better than the system in other countries?

³⁸ Heindl, "Penal Settlement and Colonization," *Journal of Criminal Law and Criminology*, XIII, 56-60 (May, 1922).

CHAPTER XVIII

THE PRISON SYSTEM: ORIGIN AND EARLY DEVELOPMENT

AT the present time the prison system is the most important agency for dealing with serious criminals. It was not always so, however. The prison as a method of punishment is a comparatively modern development.

THE ORIGIN OF THE PRISON SYSTEM

The modern humanitarian movement is responsible for the rise of prisons. When summary punishment was visited on offenders by the whip, mutilation, or death, there was no need of prisons; only places of detention were required. But when humanity reacted against the cruel punishments and transportation ceased, then imprisonment was resorted to as a more humane method. Whether such a method of punishment is really more humane or not, it was a new method, and people believed that it was more humane. It was adopted, and so humanity started one more of its experiments.

Origin in England. There had gradually grown up in the counties and municipalities of England jails or local prisons, not intended originally as places of punishment but for the detention of people awaiting trial, debtors, and those who were to undergo such forms of punishment as whipping, the pillory, the stocks, and execution.¹

Houses of correction, or bridewells, had grown up as places of punishment with the diminution of corporal and capital punishment. Later certain counties attempted to reform their jails and bridewells following John Howard's exposures. It may be said, then, that the common jail and the bridewells were the precursors of the prison.²

The British national prisons were the outgrowth of three movements: (1) recognition of the evils of the old local prisons as revealed by John Howard and his followers; (2) the stopping of transportation to America by the Revolution; and (3) the failure of transportation to Australia. The last two were the most important.

Howard had called attention to the evils of the jails but had made no

¹ Webb, *English Prisons under Local Government* (London and New York, 1922), pp. I-3

² *Ibid.*, Chaps. I-V.

suggestion that they should be nationalized. However, as the result of Howard's investigation, two bills by Popham were passed in 1774, one "an act for preserving the health of prisoners in gaol and preventing gaol distemper," the other an act to set free at once prisoners who were acquitted or discharged and thus prevent their forcible retention until they should have paid the discharge fees exacted from them by the jailers. That was as far as legislative reforms went as the immediate result of Howard's agitation.

However, the cessation of transportation to America forced the intellectual leaders of prison reform to consider the building of national prisons. Sir William Blackstone and Sir William Eden drafted a comprehensive bill for the government of the proposed national penitentiaries. In this bill the most novel principle was that of non-intercourse between the prisoners themselves. To secure this it was proposed in the bill that they should be secured in solitary cells at night and so far as practicable should be carefully supervised during the day when they were working or exercising together.³ Furthermore, the bill provided for measures to secure employment and to encourage the convict on his discharge. Another unique feature of this bill which later had influence upon prison management was that it stipulated that both officers and convicts should share in the profits of the labor of the prison. This law was passed in 1779 but did not become operative because not a single one of the national penitentiaries therein provided for was actually built and the act was superseded fifteen years later by the contract which the government made with Jeremy Bentham for the building of a large prison on the plan outlined in his book called *The Panopticon*.⁴ This bill however, was not without effect on subsequent legislation. As a matter of fact in 1791 an act was passed by Parliament applying most of the principles of this bill to all places of confinement in England and Wales. This may be called the first General Prisons Act of England.⁵ Further progress of prison reform and development was interrupted by the Napoleonic Wars.

In the meantime, to take care of the prisoners who had formerly been transported to America—at that time about a thousand prisoners a year—England resorted to the use of *hulks* previously described. Although later national prisons were built, the hulks continued to be used for eighty years.⁶

Then transportation to Australia had been determined upon as a method

³ Webb, *op. cit.*, p. 39. This proposal failed of realization in England but came to fruition nearly a half-century later in Auburn prison, New York.

⁴ *Ibid.*, pp. 45, 46, for details of Bentham's scheme and its sad ending see Philipson, *Three Criminal Law Reformers* (New York, 1923), p. 129.

⁵ Webb, *op. cit.*, p. 40.

⁶ *Ibid.*, pp. 44-46.

of relief. By 1821 the failure of the Australian experiment had become fairly clear. As the result of Jeremy Bentham's contract with the government he had spent nearly his entire fortune, the government had not reimbursed him, and his prison had not materialized because of inadequate governmental support. Finally in 1812 the government settled with Bentham and proceeded to erect a new prison at Millbank on its own account. It was built on the lands originally bought by Bentham, and by 1816 a portion of it was ready to receive prisoners.⁷

As opposition to transportation to Australia developed, a new wave of prison-building occurred. England was now forced to take measures to care for her prisoners at home. In 1832 Mr. William Crawford was sent to America to examine and report upon the prisons which had grown up in the United States. Reports of the remarkable success of the American experiments had come to England and were commanding public attention. The new prisons now constructed by England were greatly influenced by the Pennsylvania system in America, to be described later.⁸

Origin in the United States. At the time of the American Revolution the colonies had the common jails which had been brought over as a heritage from the mother-country. The one colony in which radical ideas with respect to the treatment of criminals arose was the Quaker colony of Pennsylvania. In Penn's Great Charter capital punishment for all crimes but homicide was abolished. William Penn himself had been a prisoner in Europe. Consequently the "frame of government" brought over by him abolished tortures and bloody punishments and substituted for them the penalties of imprisonment at hard labor, flogging, fines, and forfeitures. Penn had visited the workhouses of Holland and was deeply impressed with their industrial features.⁹ While these humane provisions of Penn provided for in his "frame of government" were set aside by Queen Anne, they were reenacted by the Province of Pennsylvania and continued in force until the death of Penn in 1718. Then the sanguinary laws were again restored and continued in force until the American Revolution.¹⁰

When the Quakers decided to lessen the number of capital crimes, the question arose as to what they should do with the serious offenders. The secondary punishments, like flogging, etc., were not adequate to deal with the problem.

⁷ *Encyclopædia Britannica*, Ninth Edition, XIX, 748, 749

⁸ Webb, *op. cit.*, pp. 94-96

⁹ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, 1922), p. 11

¹⁰ *Ibid.*, pp. 10, 12, 13

The Pennsylvania legislature in 1786 at once set to work to reduce the number of capital crimes and to punish in other ways the criminal. The death penalty was reserved for treason, murder, rape, and arson. Other crimes were to be punished by whipping, imprisonment, and hard labor in public. Where should the offenders be imprisoned? There was the old jail at Third and High Streets in Philadelphia, but it was characterized by the promiscuous mingling and degradation described by Howard, whose writings were just becoming known in America. It was all which Penn had tried a century earlier to displace by the institution of county workhouses. At first labor on the roads and streets was tried, with bad results. The people feared that the prisoners would escape and commit depredations; hence the prisoners at work were loaded with chains and iron collars and wore stripes. Their heads were shaved, and in every way they were rendered infamous. They were severely and strictly guarded. Yet, in spite of all, the prisoners in the streets used such vile language and insulted so many of the passers-by that this method had to be given up.¹¹ Naturally, therefore, some other method of punishment had to be devised.

In 1790 the legislature of Pennsylvania provided that the Walnut Street prison should receive the prisoners from this old High Street jail. An attempt was made at the classification of prisoners based on the nature of the offense committed. The more serious offenders were to be confined in solitary cells, while the less hardened were to be lodged in large rooms. Those in the solitary cells were without labor, the other convicts were to work in the shops in association during the day. In the new Walnut Street prison the convict fared quite well. No irons or chains were allowed, and the guards were forbidden to use weapons of any sort. Corporal punishment was unknown within the prison. The rule of silence was enforced in the shops and at the table, but the convicts were allowed to talk in their dormitories at night in low tones until they went to bed. The rule of silence was not imposed upon the female prisoners incarcerated there. An attempt was made to treat the prisoners in a humane manner; something like an honor system was put into operation; small wages were paid the prisoners, reasonable hours of labor were enforced, and other humane and moderate measures were used in the conduct of this prison. So long as the numbers were not too large and efficient managers were in charge, it worked well¹²

Here we have the beginning of the prison system in America. The signifi-

¹¹ Lewis, *op. cit.*, pp. 18, 19

¹² *Ibid.*, pp. 31, 32. These measures were adaptations of the measures found in the best English jails and bridewells. Webb, *op. cit.*, pp. 58, 59

cance of this prison lies in the fact that it became the model of prisons in the United States for the next forty years.¹³

In Philadelphia there was the greatest enthusiasm for this new prison. Order had been restored; the number of criminals on the streets had greatly decreased. In 1789 there had been 131 commitments to the old prison; by 1793 the number had fallen to forty-five. In the old prison during the four years preceding the new system at Walnut Street, 104 prisoners had escaped, during the four years of the Walnut Street régime, not a prisoner escaped. This institution was looked upon in these early days as a school of labor and an important discovery in the reformation of prisoners.¹⁴

However, after a few years, the Walnut Street prison steadily deteriorated and became a colossal failure. The discipline relaxed, and the whole prison became a hot-bed of disorder and a school of crime. The early success of the Walnut Street prison in Philadelphia, the model of so many of the early State prisons, was turned into failure because of a number of conditions:

1 The number of prisoners so greatly increased that it became impossible for the officers to give personal attention to them.

2 The increasing numbers made it impossible to keep up the early strictness of discipline

3 The large numbers made it impossible to make the work of the prisoners as productive as in the early days

4. Politics entered into the management, with the result that the high-minded and intelligent Quakers who had been on the board were displaced by political appointees with no particular interest in prison problems. The Philadelphia Society for Alleviating the Miseries of Public Prisons, which had been so influential in the early management of the prison, was no longer allowed to be a healthful influence and to keep alive public opinion with respect to prisons but became a party of protest and opposition¹⁵

The early success of the Walnut Street prison in Philadelphia led to its being copied by a number of other places; for example, Newgate prison in

¹³ Lewis, *op. cit.*, p. 25

¹⁴ *Ibid.*, pp. 28, 29

¹⁵ "The chief cause of the ultimate demoialization of the Walnut Street prison system lay, however, in the increasingly crowded condition of the institution. Persistent increase of commitments to the prison broke the system down. Much of the success of the system lay in the personal attention that could be given to prisoners by humanely-minded officers. This was possible in a prison of small numbers. But, whereas in 1793 the commitments to the prison had been but 43, in 1801 the commitments had risen to approximately 150, with no increased accommodations in shops or cells. In addition, the substitution of solitary confinement for the death penalty was increasing not only the number of commitments to the prison, but also, naturally, was increasing the number of prisoners in the institution, because many of the terms of the prisoners were long." Lewis, *op. cit.*, pp. 35-39

New York City, built by the State in 1796 and 1797; that of Massachusetts at Charlestown, just across the river from Boston, opened for the reception of prisoners in 1805; and even Auburn prison in New York during its early history. In each of these cases the result was failure.¹⁶

The New York State prison at Newgate having failed to produce the results expected of it, the board suggested in 1809 that another prison in the interior part of the State be built to care for the increasing numbers.¹⁷ That resulted in the building of Auburn prison.

On the establishment of a prison at Auburn in 1816, the same system was tried.¹⁸ The same evil results became clear also at Auburn in 1822 and 1823.

It was due to the agitation of the Philadelphia Society for Alleviating the Miseries of Public Prisons, following the failure of the Walnut Street prison to fulfil their hopes for it as a penitentiary with a reformatory program, that ultimately two State penitentiaries in Pennsylvania were established. The Society first urged this step in 1818. The suggestion was adopted by the legislature in that year, and provision was made for the building of a penitentiary in the western part of the State. Recognizing the failure of the Walnut Street prison, they advocated a new plan. In this Western Penitentiary not only were the prisoners to be confined in solitary cells, but they were also to be without work. In the same year the legislature authorized the sale of the old Walnut Street prison, and in 1821 a law was passed providing for the building of the new Eastern Penitentiary on the plan of solitary confinement. This proposal of solitary confinement without labor seems to have been a counsel of despair by those who believed in the efficacy of solitary confinement and the impossibility, under the conditions which produced such swarms of convicts, to provide gainful labor for so many. The building was not occupied until 1829. By that time the Pittsburgh plan of solitary confinement without labor had proved to be impractical. They, therefore, decided to experiment again in the new Eastern Penitentiary by retaining the principle of solitary confinement but adding to it labor in the cells.

The physical changes which made possible the beginning of another abortive experiment in Auburn came in 1821 with the completion of the northern wing made up of solitary cells for the confinement of the worst class of prisoners, but this was only an attempt to classify the prisoners on

¹⁶ Lewis, *op. cit.*, pp. 40, 41, 119, Barnes, "The Historical Origin of the Prison System in America," *Journal of Criminal Law and Criminology*, XII, 51, 52 (May, 1921).

¹⁷ *Ibid.*, p. 57.

¹⁸ de Beaumont and de Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp. 3, 4.

the early Walnut Street, Philadelphia, plan, which had failed there and which failed again here. The results here at Auburn were the climax of a demonstration that such a system must fail. Says a recent student of the system:

"One has but to ask himself how long, under such unvarying separation from all human contact and feelings, one would retain his faith, and even his sanity? Indeed, this sentence to nothing less than a living death, and to the perpetual horrors of solitude without anything to do, drove irresistibly toward madness."¹⁹

The sad failure of these early American prisons made a deep impression upon all who saw their results. De Beaumont and de Tocqueville, before the development of the Auburn and Pennsylvania systems, declared that "there did not exist a penitentiary system in the United States . . . but only a bad system of imprisonment."²⁰ Out of this failure of the early American prison grew experiments in two of the leading States to correct the evils of communication during work and sleep. These two experiments excited the interest of penologists all over this country and Europe. To these two epoch-making experiments we now turn: the Pennsylvania system developed in the Eastern Penitentiary at Philadelphia and the Auburn system worked out at the New York State prison at Auburn.

EARLY DEVELOPMENT OF PRISONS

The Auburn System. This is the name applied to that system of prison construction and management which developed in the State Prison of New York at Auburn after the failure of the congregate plan and the failure of the plan which followed of keeping in solitary confinement the worst offenders. It was made physically possible when the northern wing was completed in 1821. How did the new plan arise?

So bad had been the results of allowing prisoners to work and sleep together in the same rooms that something had to be done. The danger of outbreaks had become so great that an independent militia company was recommended in the village of Auburn. In 1821 after the wing of cells for solitary confinement without labor of the worst inmates had been completed, the legislature ordered a classification of the inmates into three grades in accordance with the plans of the inspectors who had had the wing built. The first class was composed of the most hardened criminals, who were to be confined in cells night and day without work and thus allowed to think on their misdeeds, a plan which showed the influence of the same

¹⁹ Lewis, *op. cit.*, p. 82.

²⁰ de Beaumont and de Tocqueville, *op. cit.*, p. 2.

ideas which in 1818 had led to the building of the Western Pennsylvania Penitentiary, and which at first was the plan for the Eastern Penitentiary. The second class, composed of the less incorrigible, were to spend part of their time in solitary confinement and another part in labor as a recreation. The third class, composed of the most hopeful men in the prison, were to work together in the daytime but be housed in separate cells at night. Thus, at Auburn there were now tried at the same time three different plans of treating prisoners, although each plan was intended for a different class of inmates. Out of the method applied to this third class in time grew the so-called Auburn or "silent" system.

By 1823 the new system was in full swing at Auburn. What were its essential elements? Says a recent historian of the prisons in the United States:

"The theory of the 'Auburn system' was simplicity itself. Maintain silence at all times, and you remove absolutely from prisoners the chance to corrupt each other. They can do each other no damage by their physical proximity, but, if granted communication with each other, they become a force for evil and an ever-present source of insurrection and riot. If perpetual silence be maintained, there is no reason why prisoners should not work in the shops in association during the day. Prisoners *must* be employed. Prisoners are sent to prison to do hard labor. It is a part of the sentence. The shops are the logical places of employment. Any scheme for employing prisoners separately in their own cells is economically unsound. Prisons should, so far as is compatible with the proper treatment of inmates, be made to pay expenses."

"In short, the keystone of the Auburn system was *silence!* This was the new element, introduced to solve the prison problem. And within a year it actually seemed as if a new era in prison administration had come. Hard work during the day had supplanted idleness at Auburn. Hard work was productive, healthy, and taught the inmates the principles of self-support against the time when they should be discharged from prison. Hard work had reformative value. Was it not an edict from on high that man must earn his bread by the sweat of his brow? Had not this very United States been made possible by the hard labor of settlers in a frontier land? Was there any reason why men in prison should not work at least as hard as the honest, God-fearing supporters of a family on the outside?"²¹

The only way in which industry and silence could be maintained, since there were at that date no other incentives supplied, was *punishment*. No matter how well the inmate behaved himself, he could not shorten the time of his imprisonment by a day, he could obtain no privileges above the worst offender against the rules. It was discipline by repression, labor under fear. We get a vivid picture of the institution in the first annual report of the

²¹ Lewis, *op. cit.*, pp 86-87

Boston Prison Discipline Society, founded in 1825 and always an ardent advocate of the Auburn system. The report was written by the Rev. Louis Dwight. It says:

"The unremitting industry, the entire subordination, and subdued feeling among the convicts, has probably no parallel among any equal number of convicts. In their solitary cells, they spend the night with no other book than the Bible, and at sunrise they proceed in military order, under the eye of the turnkey, in solid columns, with the lock march to the workshops, thence in the same order at the hour of breakfast, to the common hall, where they partake of their wholesome and frugal meal in silence. Not even a whisper might be heard through the whole apartment.

"Convicts are seated in single file, at narrow tables with their backs toward the center, so that there can be no interchange of signs. If one has more food than he wants, he raises his left hand, and if another has less, he raises his right hand, and the waiter changes it. When they have done eating, at the ringing of a bell, of the softest sound, they rise from the table, form in solid columns, and return under the eyes of the turnkeys to the workshops.

"From one end of the shops to the other, it is the testimony of many witnesses that they have passed more than three hundred convicts without seeing one leave his work, or turn his head to gaze at them. There is the most perfect attention to business from morning till night, interrupted only by the time necessary to dine—and never by the fact that the whole body of prisoners have done their tasks and the time is now their own, and they can do as they please.

"At the close of the day, a little before sunset, the work is all laid aside, at once, and the convicts return in military order, to the silent cells where they partake of their frugal meal, which they are permitted to take from the kitchen, where it is furnished for them, as they returned from the shop. After supper, they can, if they choose, read the Scriptures, undisturbed, and can reflect in silence on the error of their lives. They must not disturb their fellow prisoners by even a whisper. The feelings which the convicts exhibit to their religious teacher are generally subdued feelings. . . . The men attend to their business from the rising to the setting of the sun, and spend the night in solitude." ²²

What Were the Results of the Auburn System? There is no question that the Auburn system was productive. The fear of the lash under such relentless wardens as Elam Lynds accomplished that. To a fair degree the system also prevented contamination by the enforcement of the rule of silence in the workshops and by separate confinement in cells at night. But resting upon brute force it had very little reformatory effect on the inmates.

The Pennsylvania System. In the Eastern Penitentiary at Philadelphia it was provided that each prisoner should occupy a solitary cell without

²² Lewis, *op. cit.*, pp. 87, 88.

any opportunity to communicate with any one else except the warden and the chaplain. The intention first was that he was not to be permitted any labor. On account, however, of the disastrous results on mind and body of solitary confinement without labor, labor was introduced. Thus arose the famous solitary or separate system which was believed to solve the problem of contamination of one prisoner by another.

This Eastern Pennsylvania prison was authorized by the Pennsylvania legislature in 1821 but did not receive inmates until 1829. It provided for 250 prisoners, each of whom was entirely isolated from every other one. Each cell was large enough to provide room for work. The cells on the first floor each had an exercise yard—8 x 20 feet, surrounded by walls 11 feet 6 inches high—outside the wall of the prison, in which the prisoner could get light and air and some change from the monotony of the cell. In the cells above the first floor, an extra cell was provided in place of this exercise yard. However, from the beginning of his sentence to the end, the intention was that the prisoner should never see or communicate with another inmate. The only persons allowed access to him were the warden, the guard, the chaplain and representatives of some of the Philadelphia organizations interested in the welfare and care of prisoners. On occasion European visitors were allowed to talk with him. In each cell there was a Bible, the only reading matter permitted the prisoner. No letters could be written to the man's family or to any one outside, he was absolutely shut away from the world.

The theory at the bottom of this system of solitary confinement with labor contained these essential elements:

(1) Experience in the Walnut Street (Philadelphia), Newgate (New York), Charlestown (Massachusetts), and other prisons had shown that communication in any way contributed to the contamination of the less hardened by the vicious, gave place to all kinds of plots, and marked the man upon his return to society.

(2) Solitary confinement without the opportunity of communication with fellow-prisoners would stop all such contamination.

(3) Shut away from all his fellows, except those who were interested in his reformation, the opportunities for bringing the prisoner to a different state of mind would be greater. He would not be confirmed in his wickedness by the support of those equally or more criminal than himself.

(4) Living in silence day and night, he would inevitably reflect upon his sins and resolve never more to return.

(5) Labor in the cell would enable him to contribute to his support and at the same time would relieve the dreadful monotony of solitary confinement and perhaps contribute somewhat to his reformation.

In general, such were the considerations back of the plan.

What were the results of this system which seems so terrible to us to contemplate? Here are reports of conversations of de Beaumont and de Tocqueville with some of the prisoners when they visited the institution in 1831, two years after it had been opened:

"No. 20—Has been convicted of the murder of his wife; has been eighteen months in the penitentiary; health excellent, has a very intelligent look, at first, he says, solitude was insufferable, but custom overcomes gradually the horror, labour becomes entertaining, and the Bible a pleasure, isolation is tempered by the daily visits of the wardens. He has learned in prison the art of weaving. The turn of ideas of this prisoner is peculiarly grave and religious, it is a remark which we have had occasion to make upon almost all whom we have visited."²³

"No. 00—Aged forty. Imprisoned for robbery of the highway with arms in his hand, seems very intelligent; told us his story in the following terms.

"I was fourteen or fifteen years old when I arrived in Philadelphia. I am the son of a poor farmer in the west, and I came in search of employment. I had no acquaintance, and found no work; and the first night I was obliged to lie down on the deck of a vessel, having no other place of rest. Here I was discovered the next morning, the constable arrested me, and the mayor sentenced me to one month's imprisonment as a vagrant. Confounded during my short imprisonment with a number of malefactors of all ages, I lost the honest principles which my father had given me, and on leaving the prison, one of my first acts was to join several young delinquents of my own age, and to assist them in various thefts. I was arrested, tried, and acquitted. Now I thought myself safe from justice, and, confident in my skill, I committed other offenses, which brought me again before the court. I was sentenced to an imprisonment of nine years in Walnut Street prison."

"Ques. Did not this punishment produce in you a feeling of the necessity of correcting yourself?

"Ans. Yes, Sir; yet the Walnut Street prison has never produced in me any regret at my criminal actions. I confess that I never could repent them there, or that I ever had the idea of doing it during my stay in that place. But I soon remarked that the same persons reappeared there, and that, however great the finesse, or strength of courage of the thieves was, they always ended by being taken, this made me think seriously of my life, and I firmly resolved to quit for ever so dangerous a way of living, as soon as I should leave the prison. This resolution taken, I conducted myself better, and after seven years' imprisonment I was pardoned. I had learnt tayloring in prison, and I soon found a favourable employment. I married, and began to gain easily my sustenance; but Philadelphia was full of people who had known me in prison, I always feared being betrayed by them. One day, indeed, two of my former fellow prisoners came into my

²³ de Beaumont and de Tocqueville, *op. cit.*, p. 190

master's shop and asked to speak to me; I at first feigned not to know them, but they soon obliged me to confess who I was. Then they asked me to lend them a considerable sum, and on my refusal, they threatened to discover the history of my life to my employer. I now promised to satisfy them, and told them to return the next day. As soon as they had gone, I left the shop also, and embarked immediately with my wife for Baltimore. In this city, I found easy employment, and lived for a long time comfortably enough, when one day my master received a letter from one of the constables in Philadelphia, which informed him that one of his journeymen was a former prisoner of Walnut Street. I do not know what could have induced this man to such a step. I owe to him my being now here. As soon as my employer had read the letter, he sent me indignantly away. I went to all the other taylors in Baltimore, but they were informed of what had happened, and refused me. Misery obliged me to seek labour on the railroad, then making between Baltimore and Ohio. Grief and fatigue threw me after some time into a violent fever. My sickness lasted a long time, and my money was at an end. Hardly recovered, I went to Philadelphia, where the fever again attacked me. When I was convalescent, and found myself without resources, without bread for my family, when I thought of all the obstacles which I found in my attempts to gain honestly my livelihood, and of all the unjust persecutions which I suffered, I fell into a state of inexpressible exasperation. I said to myself: Well then! since I am forced to do it, I will become a thief again, and if there is a single dollar left in the United States and if it were in the pocket of the president, I will have it. I called my wife, ordered her to sell all the clothes which were not indispensably necessary, and to buy with the money a pistol. Provided with this, and when I was yet too feeble to walk without crutches, I went to the environs of the city; I stopped the first passenger, and forced him to give me his pocket-book. But I was arrested the same evening. I had been followed by the person whom I had robbed, and, my feebleness having obliged me to stop in the neighbourhood, there were no great pains necessary to seize me. I confessed my crime without difficulty, and I was sent here.

"Ques. What are your present resolutions for the future?"

"Ans. I do not feel disposed, I tell you freely, to reproach myself with what I have done, nor to become what is called a good Christian, but I am determined never to steal again, and I see the possibility of succeeding. If I leave in nine years this prison, no one will know me again in this world, no one will have known me in the prison, I shall have made no dangerous acquaintance. I shall be then at liberty to gain my livelihood in peace. This is the great advantage which I find in this penitentiary, and the reason why I prefer a hundred times being here to being sent again to the Walnut Street prison, in spite of the severity of the discipline which is kept up in this penitentiary."²⁴

Charles Dickens, on his visit to America in 1842, visited the Eastern Penitentiary of Pennsylvania and wrote concerning it as follows:

²⁴ de Beaumont and de Tocqueville, *op. cit.*, pp. 194-196

"In its intention, I am well convinced that it is kind, humane, and meant for reformation, but I am persuaded that those who devised this system of Prison Discipline and those benevolent gentlemen who carry it into execution, do not know what it is that they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers, and in guessing at it myself, and in reasoning from what I have seen written upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow creature. I hold that this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body, and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh, because its wounds are not upon the surface, and it extorts few cries that human ears can hear, therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay. I hesitated once, debating with myself whether, if I had the power of saying 'Yes' or 'No,' I would allow it to be tried in certain cases, where the terms of imprisonment were short, but now, I solemnly declare, that with no rewards or honours could I walk a happy man beneath the open sky by day, or lie me down upon my bed at night, with the consciousness that one human creature, for any length of time, no matter what, lay suffering this unknown punishment in his silent cell, and I the cause, or I consenting to it in the least degree."²⁵

On the other hand, it must not be forgotten that there were no whips or other methods of punishment in the Eastern Penitentiary. The punishment was mental and social rather than physical.

So successful was this system believed to be that it attracted wide attention in Europe and determined the nature of European prisons, while for reasons to be noted later most American prisons followed another plan.

Auburn and Pennsylvania Systems Compared. These two systems of prisons, the Auburn or the Silent System, and the Pennsylvania, or the Separate System, were not so radically different as the controversy which raged over them for so long would seem to imply. As has been said, the systems were more alike from the beginning than they were different from each other. Both prevented the prisoners communicating with one another. Both locked the prisoners in separate cells at night. Both believed in the efficacy of labor. The basic difference between the two systems was that under the Pennsylvania system the convicts were separate from each other every moment of their stay in the prison. When they got out no prisoner could be recognized by another because he had never had an opportunity to

²⁵ Charles Dickens, *American Notes* (New York, 1887), pp. 297-298

see him. On the other hand, Auburn prisoners knew each other, although they could not communicate with each other except upon pain of punishment.²⁶

Whence Arose These Two Systems Which Seem to Be New in Penal History? It has often been assumed that they were original American inventions. It is probably true that the peculiarities of the two systems were products of American soil. There is evidence, however, that both were simply developments of European precedents.²⁷

What was the comparative influence of these two prison systems? The influence of the Auburn system was very great, especially in the United States. It attracted much attention also in Europe.²⁸ However, while it was mentioned favorably by such European authors as de Beaumont and de Tocqueville, Europe so far as she was influenced by American examples followed the Pennsylvania plan. On the other hand it was the Auburn plan which was copied most largely in the United States; to-day all States have adopted the Auburn system.

How does it happen that, while European visitors to American prisons were almost unanimous in their opinion that the Pennsylvania system was the better of the two, the various States of this country have followed the Auburn system? The explanation of its popularity in America lies in the following considerations: (1) In its early days it was administered by exceptionally able wardens. Captain Lynds, Gershom Powers, and others like them were men who would have made a success of any system. (2) Such a prison was economical to build. Many more men could be housed for the same expenditure of money than by the Pennsylvania system. (3) It was more productive industrially than its competitor. The only prisons in the early history of prisons in the United States which paid their way were those built and administered on this basis. (4) It had unusual publicity. The annual reports of its wardens made a fine showing. The Rev. Louis Dwight, for so long a time the secretary of the Boston Prison Discipline Society, was an earnest advocate of this system. He was a man trained for the ministry who, on account of ill health, could not pursue that vocation. With a high degree of religious zeal, he turned to the problem of prison reform and the salvation of individual prisoners. He is described as a "zealous, untiring, unreserved adherent of the system he had espoused, almost with deliberate

²⁶ Lewis, *op. cit.*, pp. 119, 125

²⁷ *Ibid.*, p. 81. As we have seen above, the essentials of this system were proposed by Blackstone and Eden in 1799, and before that certain of these features were introduced in some of the new English county jails and bridewells

²⁸ *Ibid.*, p. 78

blindness seeing for many years no faults in a faulty system." He traveled through all the States in which prisons were a subject of interest, lecturing, advising and doing his utmost to see that the States put into operation what he considered the best system, viz., the Auburn. Furthermore, the annual reports of this society constituted the chief, although not the sole, published material upon prisons. It was most natural, therefore, that the Auburn system should be adopted.²⁹

In short the adoption of the Pennsylvania system by Europe, and of the Auburn system by this country, in each case was due to the relative weight of propaganda for each on the two shores of the Atlantic.

Whatever may be the shortcomings of these two systems as developed in America from our point of view, there is no question that they excited the interest and admiration of all European visitors. With these American experiments before their eyes, two clear-thinking Frenchmen, de Beaumont and de Tocqueville, summed up the situation as they saw it in the United States as follows:

"To recapitulate, we have signalized in the two first parts of this report, the advantages of the penitentiary system in the United States. The inflexible severity of a uniform system, the equality of punishments, the religious instruction and the labour substituted for the system of violence and idleness; the liberty of communication supplanted by isolation or silence, the reformation of the criminals instead of their corruption; in the place of jailors, honourable men who direct the penitentiaries, in the expenditure, economy, instead of disorder and bad management; these are the characteristics which we have acknowledged in the new American system."³⁰

Whether we can agree with them in the light of what has developed from the two systems or not, we must acknowledge that here were two experiments which represented in their day a distinct advance on European methods of treating the criminal.

Other Early American Contributions to Prison Development. In some of these early American prisons certain measures were devised which have been widely adopted in the conduct of prisons. In Georgia in January, 1832, Colonel Mills instituted what was exceedingly rare, if not entirely unique, in this period, viz., (1) *a system of rewards*. The privileges of the yard on Sunday to the good-conduct prisoners and the privilege of working for themselves during the ninety-minute period allowed for dinner were introduced. No other prison had invented such a radical innovation at that

²⁹ Lewis, *op. cit.*, pp. 226-228

³⁰ de Beaumont and de Tocqueville, *op. cit.*, p. 106. See also pp. 59, 60, 88

time. As a matter of fact, the freedom of the yard on Sundays was not widely developed in 1922, and in 1910 no traces could be found of it in most of the eastern prisons.³¹

In the Kentucky penitentiary, (2) *a marking system* was introduced. Inmates were credited for their work, and debited for clothing and maintenance, a proportionate share in the expenses of retaking escaped convicts, and court costs.

In the penitentiary of Tennessee in 1833 was introduced the method of (3) *commutation of sentence*, by what is now known as "good time." Lewis is authority for the statement that such a practice existed in no northern prison at the time. In this prison, deduction of two days in every month was made for the term of the sentence, and, conversely, for each day of punishment inflicted, five days were added to the sentence.³²

New Hampshire, which built its first prison at Concord in 1812, contributed (4) *a new type of successful prison manager* in the person of its famous warden from 1818 to 1825, Moses Pilsbury. While he was a strict disciplinarian, he differed from wardens like Elam Lynds in being a very humane man. He looked after his charges in sickness, tried to instruct the prisoners, and endeavored to use religion for their benefit. Moreover, he was a good manager and turned a deficit into a surplus.

Vermont's prison, built in 1809, and remodelled in 1831 along the lines of Auburn, provided (5) *a stint for each prisoner with compensation for overwork*, (6) *tobacco for well-behaved prisoners*, (7) *the privilege of writing letters to friends*, and (8) *frequent visitors*.³³

During the earlier period in Massachusetts one outstanding suggestion was made, but it got no response from the legislature. The committee appointed by the legislature to investigate prisons suggested (9) *a system of after-care for released prisoners*, namely, that outside the prison walls should be erected a wooden building where discharged prisoners who were destitute and had no work might be temporarily lodged until they could find a job; and that (10) *the inmates be divided into three grades and that only those of the first grade be eligible for pardon*. The Prison Board refused to take this advanced step, but directed their energies for more rigid punishment. A modern feature adopted during this period of the Massachusetts State Prison was (11) *the use of musical instruments by the inmates in rooms lodging from six to ten prisoners*. They were also permitted to have lights

³¹ Lewis, *op. cit.*, p. 265.

³² Lewis, *op. cit.*, p. 268.

³³ Reynolds, *Recollections of Windsor Prison, etc.* (Boston, 1834), cited in Lewis, *op. cit.*, p. 157.

regarded him as an unfortunate being, not as a brute. Crawford in 1832 found that there was no corporal punishment in Wethersfield. The penalties were solitary confinement in a dark cell and reduction in diet. Moreover, Pilsbury gave great attention to the physical needs of the prisoners, was kind-hearted, helped them in times of distress, and endeavored to give them religious instruction and to aid them in correcting their morals.

In this prison under Amos Pilsbury we find the beginnings of (23) *the first honor system in American prisons*. Men were treated somewhat as our trustees are about the prison at the present time and allowed to go outside the walls for various duties. Under such a warden as Amos Pilsbury it was possible to do a great many things which a warden of less understanding and force of character would be unable to do. It was under his direction that Mr. Brockway, later the first superintendent of the Elmira Reformatory, was trained. Furthermore, in spite of the fact that he pursued a policy of leniency in his administration which Elam Lynds would never have countenanced, he showed it was possible to make the prison pay.

The Maryland prison in this period was characterized by two important achievements: (24) *It is the first prison in which a matron for the female inmates is to be found*, and in this institution was established (25) *an educational system for all the prisoners*. All of Sunday was devoted to school except the time spent in church. On week-days the prisoners were allowed to read and study after their working hours. In 1833 it is reported there were 211 convicts in the school on Sunday who originally had been unable to read or write, instructed by ten volunteer teachers from the city of Baltimore.³⁵

The other prisons in the United States in this early period made no important contributions to prison methods. This brief review is sufficient to show that already in these early American prisons experiments were going on under the direction of prison wardens which had their effect upon the prisons of the United States in later years: "good time" as an incentive to good conduct, emphasis upon productive labor, the beginning of prison schools, prison libraries, and certain recreational periods, permission to prisoners to cultivate plots of ground, religious and moral instruction with regular chaplains in some of the prisons, a trial of payment to prisoners as an incentive to industry and to enable them to have something upon their discharge or to send something to their families, the beginning of a new kind of disciplinarian governing his charges by firmness and yet with a sincere interest in their welfare, the beginning of a plan to make the prisoners subject to the ordinary economic motives on the outside by charging them for the

³⁵ Lewis, *op. cit.*, Chap. 17

expenses incident to their imprisonment and allowing them a certain sum for their wages, and the beginning of a self-government association.

Unfortunately many of these early and promising experiments which later have been adopted in modern prison practice went down in the maelstrom of incapacity and mediocrity characteristic of the later period of prison development. Nevertheless, it was in these experiments in the early days that some of the later prison reformers found the basis of the recommendations incorporated in the declaration of principles adopted in Cincinnati in 1870, which came to fruition in more recent times. There is no question that the history of American prisons from the early days up to the present with a few exceptions during the middle of the last century shows steady improvement. These improvements were due to the insight and earnest efforts of some of these important wardens in the early days of American prison history. This history shows once more the truth of Emerson's epigram, that an institution is but the lengthened shadow of a man.

QUESTIONS AND EXERCISES

1. How old is the prison as a place of punishment?
2. What three facts account for the rise of the prison system in England? Account for its origin in the United States
3. What are the outstanding differences between the Auburn and Pennsylvania prison systems?
4. Why was the Pennsylvania system followed in Europe and the Auburn in the United States?
5. What is meant by the new devices known as "good time" and "rewards for good conduct," which were invented in American prisons before 1845?
6. What were some of the more significant experiments in early American prisons?

CHAPTER XIX

LATER DEVELOPMENT OF THE PRISON SYSTEM

DEVELOPMENT IN ENGLAND

TO understand what took place in England, we must keep in mind the American experiments just described, for when England came to the place where she was forced to build prisons, she endeavored to learn from the experiments carried on in the United States.¹

As the failure of transportation became apparent, it was necessary to substitute something in its place. In 1853 a law was passed establishing penal servitude instead of transportation. In the later period of transportation (1846), Lord Grey and Sir George Grey of the Home Office felt that there should be (1) *a limited period of confinement in England*, which was called *probation*; (2) that then the convict should be put in *associated labor on public works*, either at home, at Bermuda, or at Gibraltar; and then (3) moved on *ticket-of-leave* to any colony willing to receive him. In the meantime a law had been passed in 1839 which made separate confinement possible and did away with the whole system of congregate confinement which had been in practice in the local prisons.²

This plan worked very well so long as those who had finished the first two periods of their confinement could be removed on ticket-of-leave to a colony. However, in 1851 Van Diemen's Land, the last colony except Western Australia which would receive British convicts, refused longer to accept the ticket-of-leave men. What could now be done with the 8,000 male convicts? The first experiment was to try ticket-of-leave at home. To this, however, the public objected. Moreover, by reason of the fact that confinement for eighteen months in the first period of the sentence was believed to result in serious physical and mental dangers to the prisoners, this period was reduced from eighteen to nine months.³

As a result of the visit of a Mr Crawford to the United States the Pentonville Prison was erected on the cellular plan in 1842, thus following the

¹ Ruggles-Brise, *The English Prison System* (London, 1921), p. 27.

² *Ibid.*, p. 27.

³ *Encyclopaedia Britannica*, Ninth Edition, XIX, 753.

Pennsylvania system with (4) *separate confinement for the first period of sentence*, ranging from fifteen to eighteen months. (5) Certain *gratuities to the prisoner* to encourage good conduct and industry, as well as to provide him with a certain amount of money upon his discharge, were established at this time.⁴

The Act of 1857 made another change. (6) *In place of the ticket-of-leave for the last part of the sentence was substituted another period of imprisonment*, which, however, could be abridged by good conduct. After this act had gone into effect, the authorities, on account of the bad effects of solitary confinement and the contamination of young offenders by the older and more hardened inmates, put into effect regulations providing what has been called (7) *the Progressive Stage System*. Under this system, nine months were spent by each inmate in separate confinement. Then the remainder of the sentence was divided into three different periods, the passage from one to the next being based on conduct and rewarded with gratuities, badges, and a difference in dress. This system was devised by Sir Joshua Jebb who took great interest in the prison system at this time, and by him was introduced into Ireland. There it was developed by Sir Robert Crofton and became known as the Irish System⁵

Later, to the Irish System there was added (8) *an intermediate stage* for prisoners about to be discharged. In this stage they lived in comparative freedom, separate from the other prisoners, with the purpose that they should be prepared for free life in society. From this intermediate stage the prisoner was discharged, but with the proviso that he should be supervised by the police for a certain length of time. A plan was also developed by which he was found employment after he was released from the intermediate stage.⁶ In 1863 the feeling which had been growing for some time that the prisoners had it too easy found expression in the report of the Royal Commission. At once the directors adopted (9) *severer methods of treatment*.⁷

The Act of 1865 concerned itself chiefly with (10) *an attempt to set standards* for the management and discipline of prisons, local as well as convict, by providing for the national inspection of local prisons and by setting up in detail the standards to which they were to conform—standards enforced by refusal of grants authorized to the local prisons from the national treasury.⁸ In spite of these regulations in the law, however, the high ex-

⁴ Ruggles-Brise, *op. cit.*, p 27

⁵ *Ibid.*, p 29

⁶ *Ibid.*, p 30

⁷ *Ibid.*, pp 43-45

⁸ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 55, Webb, *English Prisons under Local Government* (London, 1922), p 190

pectations were doomed to failure, although there were some good effects. Eighty of the 193 prisons closed up, and the mark system which Maconochie had developed in Norfolk Island was introduced into English prisons.⁹

So far as the unification of the prison system is concerned, the first step was taken in the Act of 1877. This law put all local gaols into the hands of a National Commission for Local Prisons, to be appointed by the Home Secretary. It was to have charge of the administration of all the local prisons throughout England and Wales. Since 1850 the convict prisons had been under a national commission, while this law changed the administration of the local prisons, it did not essentially modify the principles of management set forth in the Act of 1865.¹⁰

The next step in the development was the passage of (11) *the Habitual Criminals Act in 1869*. Under this act and the Prevention of Crimes Act of 1871, greater facilities were given to the police for the detection of habitual criminals and for their longer detention.¹¹

In 1878 a Royal Commission appointed to look into the prisons made its report. Out of this report came a number of important modifications in the management of prisons. Thus in 1879 the prison commission established what is known as (12) *the "Star" Class*, in which were placed all first offenders.¹² The commission recommended (13) *greater severity* in the treatment of prisoners, as set forth in the law of 1865. It suggested (14) *cutting down the period of a convict sentenced for the second time from seven to five years*. It suggested (15) *unpaid and independent inspection of the local prisons*.¹³ In 1879 it was recommended that (16) *weak-minded male prisoners be segregated in a special institution*, a recommendation which was not carried out until 1901.¹⁴ In 1891 changes were made whereby (17) *prisoners sentenced to three years could take advantage of the progressive stages*. Before this time no prisoner sentenced to less than six years could profit by it.¹⁵ Moreover, in 1891 (18) *the classification scheme* which had been begun by the device of the Star Class in 1879 was extended. In that year two other classes were added: the Intermediate Class and the Recidivist Class. Furthermore, there was added to these classes of prisoners a Long Sentence Division for men who were sentenced for eight years or more and who had

⁹ Webb, *op cit*, p 192; Ruggles-Brise, *op cit*, p 31, *Encyclopaedia Britannica*, Ninth Edition, XIX, 754

¹⁰ Webb, *op cit*, pp 191-201

¹¹ Ruggles-Brise, *op cit*, p 36

¹² Hobhouse and Brockway, *op cit*, p 214, Ruggles-Brise, *op cit*, p 247.

¹³ Ruggles-Brise, *op cit*, p 37

¹⁴ *Ibid*, p 41, Webb, *op cit*, p 225

¹⁵ Ruggles-Brise, *op cit*, pp 39-40

already served five years, and the Aged Convicts Division, for men who were old and therefore physically feeble and not dangerous, and who had little prospect of surviving the sentence in confinement. These were subject, as far as possible and in accordance with their conduct, to only slight severity.¹⁶

In 1898 the final step in the unification of the prison system was taken. Previous to this time there had been a national board for the control of local prisons and a board having charge of convict prisons. (19) *This act merged these two boards into one.*¹⁷ This act also (20) *gave the Home Secretary power to make rules for the government of prisons* but subject to the approval of Parliament. This was due to the feeling that too much power had been lodged in the hands of the prison commission and the Home Secretary.¹⁸ The act also provided for (21) *an unofficial board of visitors for convict prisons*, similar to the visiting committees for local prisons. Up to this time corporal punishment of prisoners, it was felt, had been inflicted after secret trial without careful supervision. The act provided that (22) *corporal punishment could be ordered only by these visiting committees or visitors and by the home office, and should be confirmed by the Secretary of State.* Furthermore, corporal punishment was restricted to cases of personal violence to a prison official and cases of mutiny.¹⁹ The act also (23) *abolished the treadmill and crank as methods of prison labor*,²⁰ and established (24) *reduction of sentence* by good marks to all intermediates sentenced to more than one month.²¹ Much complaint had been offered about the dietaries of the prisons. This act (25) *made these dietaries more adequate*, with the result of a drop in the tuberculosis rate of men in separate confinement.²² Finally, (26) *it provided for economic production* in the prisons by the labor of the inmates in association. Hitherto, after the public works had been completed, either the treadmill or crank had been used, or prisoners were engaged in poorly productive labor in their cells.²³

In 1907 Parliament passed (27) *the Probation Act*, a very important piece of legislation which enabled a court, instead of pronouncing sentence upon the convicted prisoner, to release him on probation, whenever his age, health, mental condition, antecedents, or character, the triviality of his offense, or extenuating circumstances made such a course seem desirable to

¹⁶ *Ibid.*, p. 41.

¹⁷ Webb, *op. cit.*, p. 225; Ruggles-Brise, *op. cit.*, p. 46.

¹⁸ Ruggles-Brise, *op. cit.*, p. 46, Webb, *op. cit.*, p. 225

¹⁹ Ruggles-Brise, *op. cit.*, p. 227, Webb, *op. cit.*, p. 225.

²⁰ Webb, *op. cit.*, p. 225.

²¹ *Ibid.*, p. 225

²² *Ibid.*, pp. 225-226

²³ *Ibid.*, p. 226.

the court. During the period of probation he was to be under the supervision of a probation officer.²⁴

The next year, 1908, (28) *the Prevention of Crimes Act* instituted an entirely new system of reformatory treatment for some of the more serious offenders among what the British call "juvenile adult criminals." This gave rise to the *Borstal institutions*, corresponding somewhat closely to the reformatories in this country. This provision relieved the common jails of a large number of criminals for whom they were unsuited. Furthermore, this act put into operation a new principle. The judge was empowered to add to any sentence of penal servitude of not less than three years a further term not exceeding ten years, of what was called *preventive detention*. The purpose of this provision was to keep in confinement hardened professional criminals who had been discovered to be such and who were not deterred by prolonged imprisonment or penal servitude. This act was a substitute for an indeterminate sentence bill which had been introduced in 1903 and failed of passage. To carry out this provision, a special prison at Camp Hill in the Isle of Wight was set apart in which this supplementary detention was to be spent under pleasant surroundings and with the minimum of prison discipline.²⁵

In 1913 came (29) *the Mental Deficiency Act*, one purpose of which was to put into special institutions persons of both sexes who had been committed to prison for crime but whose criminality was the result of mental deficiency.²⁶ Finally, in 1914, (30) *the Criminal Justice Administration Act* was passed. This provided for the instalment payment of fines and permitted the court to place offenders between sixteen and twenty-one on probation until the sum was paid. The purpose was to save from a prison sentence the enormous number of persons who were committed to the prisons in Britain in default of payment of fines.²⁷

DEVELOPMENT IN THE UNITED STATES

What developments have taken place in prisons in the United States since about 1845? As we have seen, at that date there were two general systems in operation: the Pennsylvania, or "separate system," and the Auburn, or so-called "silent system." As time has gone on, no prison in the country has retained the Pennsylvania system. The Eastern Penitentiary of Pennsyl-

²⁴ Webb, *op. cit.*, p. 228.

²⁵ For a detailed discussion of the English prison since the World War see Gillin, *Taming the Criminal* (New York, 1931), Chap. VIII

²⁶ Webb, *op. cit.*, pp. 228-229

²⁷ *Ibid.*, pp. 229-230

vania, where it originated, has finally abandoned it. The other prisons which have grown up in the United States, while they vary in details, have followed the silent system of Auburn.

Gradually a number of changes have occurred in the prisons of the United States, partly in the interest of humanitarian treatment of the inmates, partly for the improvement of discipline, and partly looking toward the reformation of the prisoners. The important changes are as follows:

(1) *The lock-step has been done away with* in most prisons. It was introduced into the Auburn prison by Elam Lynds about 1821. The intention of the lock-step was to prevent violence on the part of the prisoners. It has been found, however, in experience that this method of marching was not necessary to preserve order, and now the prisoners march in military formation, two abreast. This change was begun by Mr. Johnson, warden of Sing Sing prison in 1900.²⁸

Instead of feeding the convicts in their cells, as was customary quite generally at first, they are now usually fed in a (2) *a common dining-room*. Silence at meals, however, is still maintained in most of the prisons, although a few have found it possible to allow the prisoners to talk at meals. The reason for silence at meals is that many wardens believe the dining-room is the place in which riots are most likely to break out. The prisoners can use the dishes as weapons, and occasionally a serious riot does occur in spite of the rule of silence. The State prison at Charlestown, Massachusetts, is the only one in the United States which does not have at the present time a common dining-hall.

(3) *While some changes have been made in the structure of the prisons, most of them still follow the cell block enclosed by a building.* In the structure of the newer prisons greater attention has been given to sanitary requirements. In the old prisons the cell door was narrow and in many cases admitted neither air nor light. Later a barred door allowed some ventilation and provided easy inspection from the outside. In the more recent prisons the whole front of the cell is made up of bars so that ventilation is very much better. For a long time the cells had only primitive sanitary provisions. A wash basin and a bucket were the only toilet conveniences. In the newer prisons, each cell has a lavatory with flowing water and a sanitary toilet. In the best prisons of the present day in the United States a good mattress is provided and the prisoner has a sufficient number of blankets. Moreover, heat is supplied in sufficient quantities so that the suffering from cold charac-

²⁸ Pettigrove, "State Prisons in the United States," in Henderson (editor), *Penal and Reformatory Institutions*, Eighth International Prison Congress (New York, 1910), pp. 36, 45.

teristic of the older prisons is no longer to be found. In addition, the heating system provides ventilation in the winter time.

Furthermore, instead of small, narrow windows which admit a minimum of sunlight into the cell house, the newer prisons have large windows extending almost from floor to ceiling of the cell house, admitting the maximum of sunlight. Frequently, however, cells may still be found in the newer buildings into which the sun does not shine at any time of the day. Efforts are being made so to build the cell blocks that the sun will shine into the cell either in the forenoon or in the afternoon.

(4) *The strict rule of silence is gradually fading out.* No warden claims now, as Elam Lynds did at Auburn and at Sing Sing, that there is no communication, but it is reduced to a minimum.²⁹

Since the Civil War in many of the Southern States there have grown up (5) *the State prison farms, and the county and State chain-gangs for road work.* These particular developments took place largely because the poverty of the South following the war prevented the adoption of prison systems in those States which did not already possess them. The chain-gang, especially in the counties, has been subject to grave abuse and represents a development not to be encouraged.³⁰

Early in the history of prisons in the United States (6) *an attempt was made to classify the prisoners* within those institutions built upon the Auburn plan. This project was found no more possible in the United States than in England. Most of the States, however, do grade the prisoners for purposes of discipline. While all classes work together in the common shops, those in the higher grades have special privileges.

(7) *The grading system*, while varying from institution to institution, is essentially as follows: There are three grades of prisoners. When admitted the inmate enters the second. By good conduct he advances into the first, or for bad conduct he is degraded to the third. Usually there is some difference in the style of uniform worn. Privileges vary decidedly in the three grades, for example, writing letters, receiving visits and tobacco, and other privileges which relieve the monotony of prison life.³¹

Of vastly more importance than classification within the institution is (8) *classification by institutions.* In 1824 Massachusetts, New York, and Pennsylvania took out of the prisons and placed in the houses of refuge the juvenile delinquents. From that time on, the segregation of juveniles from

²⁹ Pettigrove, *op. cit.*, p. 47

³⁰ Gillin, *Taming of the Criminal* (New York, 1931), Chap. 9; Steiner and Brown, *The North Carolina Chain Gang* (Chapel Hill, N. C., 1927), Chaps. V, VI

³¹ Pettigrove, *op. cit.*, p. 51

adult criminals by means of special institutions for the former has gone on apace.³² Next occurred the segregation of insane criminals in institutions for the insane. In 1826 the Prison Discipline Society of Boston called attention to the presence in the county jails of lunatics. However, the movement to provide special institutions for the criminal insane was late in developing. As late as 1845 the only State which had a good system of transfer for the insane from prison to State asylum was Massachusetts.

The segregation of women from male criminals in separate institutions developed very much later. Indiana, in 1869, and Massachusetts, in 1874, were the first to build separate prisons for women.

In 1876 there was opened in New York the first institution for young adult criminals when Elmira was opened as the first reformatory in the United States for adults. Very recently the mentally defective delinquent has been segregated from other prisoners in special institutions in New York and Massachusetts. This important classification by institutions should be made in every State.

(9) *The characteristic dress* in the early days was a uniform of black and white stripes, the idea being that the prison dress would contribute to the deterrent effect of punishment and, if escapes occurred, would help identify the prisoner. It soon appeared, however, that escaped prisoners can easily find ways to change their clothing. It was seen, too, that to degrade the prisoner unnecessarily has no good influence upon him. Hence, in most of the prisons the stripes have been done away with entirely or are reserved for the third-grade prisoners. Moreover, in some prisons those in the first grade are allowed to wear special stripes or chevrons on the sleeve, which are often highly prized.

(10) *Prison discipline* has been very much modified in the course of time. Elam Lynds enforced silence in Auburn and Sing Sing by the lash and other methods of corporal punishment. In other prisons, in addition to whipping, the shower, the sweat-box, and other inhuman devices were used. Donald Lowrie has described the inhuman strait-jacket which was once used in San Quentin.³³ In spite of all that has been done, however, in many prisons even at the present time discipline is unnecessarily brutal and inhuman.³⁴ The trend of punishment of prisoners at the present time is toward deprivation of privileges and in extraordinary cases solitary confinement on bread and water.

Another important change which has taken place in the prisons is in (11)

³² See Chap. XXVIII, *infra*

³³ Lowrie, *My Life in Prison* (New York, 1912), pp. 69-72

³⁴ Pettigrove, *op. cit.*, pp. 54, 55

the dietary. When it was believed that prisons should be made as deterrent as possible, the only reason why the prison official should see that the prisoners had good food was that their economic productivity might not be interfered with. In general, however, it can be said that in the prisons more and more attention has been given to proper dietary for the inmates. It has been observed that men in restraint need a greater variety of food than free men. The testimony of a number of wardens I have consulted is that the prisoner's health improves in prison, partly by reason of his food but more possibly on account of regular life and hard labor. In spite of this progress, however, prison dietaries leave much to be desired, as is shown by the Prison Survey Committee of New York.³⁵

Early in the nineteenth century the need of (12) *a library for the use of the prisoners* was felt. The development of prison libraries is one of the most promising trends in the history of prisons in the United States. While in many prisons the library is still very poor, in a great many a good deal of attention is given to providing reading matter for the men in their cells. *The Handbook of American Prisons and Reformatories, 1929*, shows a very commendable growth in the number of institutions having libraries and a promising development in the quality of the books and magazines to be found there.

In the early days, in both Auburn and the Eastern Penitentiary of Pennsylvania, no (13) *communication with relatives and friends*, either by visit or by letter, was permitted. In most prisons at the present time prisoners in the second and first grades are permitted to write letters and to receive letters from relatives and friends. Those who are not in the third grade are also permitted to receive visits at certain times. An increasing number of our prisons and reformatories are liberalizing the privileges of visiting and writing allowed the prisoners, although much still remains to be done.³⁶

Early in the history of prisons in the United States, it was noticed that large numbers of prisoners could neither read nor write. Even in the early days of the Eastern Penitentiary of Pennsylvania the prisoners were taught to read, in order that they might read their Bibles. For a long time, however, no great emphasis was placed upon (14) *an educational program in the prisons*.

Maryland had the first prison school in the United States (1829). The prison board said that this educational system resulted in "the entire destruc-

³⁵ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), p. 99.

³⁶ For details concerning the present situation see Chap. XXIII, *infra*. See also "Mail Privileges for Prisoners," *The Survey*, August 19, 1916, pp. 519-520.

tion of the improper indulgences and corrupt association, to which exemption from labor on Sunday afforded them more opportunity than on any other day." In certain of the more progressive prisons and reformatories a very good beginning of an educational program has been made. The outstanding institutions in this country in 1929 in the educational field for prisoners were San Quentin, California, and Waupun, Wisconsin.³⁷ In some of the Federal prisons considerable progress has been made in education in the past few years due to the inspiration of Sanford Bates and his colleagues.

Another development of considerable importance is the privilege of (15) *recreation* at stated times within the prison. Gideon Haynes, warden of the State prison at Charlestown, Massachusetts, was one of the first to allow the prisoners to assemble together on a holiday. On July 4, 1864, the prisoners were assembled in the chapel for the usual services, then they were taken into the yard and the warden announced to them that they would have an hour's liberty in which they could enjoy themselves in any way they wished. He describes the result as a great success. The men, restrained to keep silence for so long, shook hands, embraced one another, danced, shouted, and cried. Warden McClaughry of Joliet, Illinois, did the same thing in 1877. These seem to have been the first experiments in allowing prisoners to meet together in ordinary intercourse.³⁸ Since that time a number of prisons have organized recreation on stated days. At the Wisconsin State prison every Saturday afternoon from June 1 to October 1 is a holiday. At this and other institutions organized recreation is carried on at stated times.³⁹

The practice of (16) *granting "good time"* in commutation of the sentence as a result of good behavior and industry in the prisons has become practically universal. Two other developments of vastly more importance have occurred recently: the parole system and the probation system. The parole system spread from the establishment of the Elmira Reformatory until now most of the Northern States and a few of the Southern States have such a system.

Probation is of more recent growth, although on a private basis it began in Boston in 1848.

In connection with (17) *prison labor systems*, to be discussed later, some

³⁷ *Handbook of American Prisons, 1929* (New York, 1929), pp. 163-164, and 1005-1006.

³⁸ Pettigrove, *op. cit.*, p. 63.

³⁹ Lawes, *Life and Death in Sing Sing* (Garden City, N. Y., 1928), p. 75, and *Twenty Thousand Years in Sing Sing* (New York); Garrett and MacCormick, *Handbook of American Prisons and Reformatories, 1929* (New York, 1929), pp. 35, 406, 416, 426, 436, 454, 468, etc. *Report on Penal Institutions, Probation and Parole*, National Commission on Law Observance and Enforcement (Washington, 1931), pp. 268-271.

very interesting experiments have taken place in working prisoners outside the prison walls, either on prison farms or upon public roads. The prisoners working in this way are usually carefully selected and are very desirous of the greater freedom to be found on the farms and in the road camps.

A development has taken place in (18) *the aims of punishment* during the 150 years of penological history. Occasionally, even in the earliest period, reformation was recognized as an aim. We must not forget that the original idea back of the penitentiaries was that of reformation, that indeed was the essential difference between a prison and a penitentiary. As early as 1787 at the home of Benjamin Franklin in Philadelphia, Dr. Benjamin Rush read a paper on penal administration. According to him the purposes of punishment were (a) the reformation of the offender; (b) the deterrence of others from crime by the spectacle of public punishments; and (c) the protection of society by removing from its midst those who by their tempers and their crimes showed that they were unfit to live at large.⁴⁰

Many of the early prison reformers expected reformation through the influence of religion. Elam Lynds of Auburn was an exception. He went so far as to say that he did not believe in complete reformation except with young delinquents. He told de Beaumont and de Tocqueville that "Nothing in my opinion is rarer than to see a convict of mature age become a religious and virtuous man. I do not put great faith in the sanctity of those who live in prison."⁴¹ The Boston Prison Discipline Society centered its agitation upon two specific matters security against escape by inmates and productiveness of their labor.⁴²

In spite of all that has been written and said in recent years, the predominant aims of society in inflicting punishment upon prisoners remain retribution, social security, deterrence and, if possible, reformation. More and more, however, the last is receiving emphasis. Thus, in the law of the State of Wisconsin, the purpose of the State prison is said to be as follows: "The state prison shall be the general penitentiary and prison for the punishment and reformation of all offenders committed and sentenced according to law by any court in the State of Wisconsin or any court of the United States held in the districts of Wisconsin to imprisonment therein."⁴³ Moreover, as an indication that the State contemplates the reformation of prisoners in this institution, it is provided that even a prisoner sentenced by the courts

⁴⁰ Lewis, *op. cit.*, p. 19

⁴¹ de Beaumont and de Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), Appendix XI, pp. 201-202

⁴² Lewis, *op. cit.*, pp. 328-329

⁴³ *Laws of Wisconsin Relating to Public Charities* (Madison, Wis., 1920), Section 53.01, p. 107.

for life may be paroled after thirty years "less the diminution which would have been allowed for good conduct pursuant to law had his sentence been for thirty years."⁴⁴

(19) *The honor system* was devised to develop personal responsibility and to try out the men in preparation for free society. The trustees on the whole have responded favorably to the increased liberty thus provided. In increasing numbers men are placed on their honor on prison farms in camps connected with the prison and on other work outside the walls. It remained, however, for Thomas Mott Osborne to develop a *system of self-government* in his Mutual Welfare League, which he inaugurated in Auburn prison, New York State, in 1913. Under this system the prisoners form an organization in which they have the responsibility of trying and punishing inmates for breaking the rules.⁴⁵

Recently a more important development has taken place in a number of our prisons and reformatories—(20) *the introduction of psychological and psychiatric examinations of the inmates*. If the prisoner is to be treated individually, his mental and emotional make-up must be understood. While progress has been made in some of our institutions—those in Massachusetts and New York especially—much still remains to be done along this line.

Finally, there has recently appeared a tendency in some States to select (21) *wardens and other prison officials* for their capability rather than on their political qualifications. Consider the absurdity of appointing as the president of a college or university and as teachers in such an institution those who have not prepared themselves by any course of study or discipline but who are politically acceptable to the party in power. Is it any less absurd to appoint to the important position of head of a prison or reformatory a man whose only qualification is his political affiliation or service? The parallel between the two kinds of institutions is not far-fetched. The college as an educational institution is for the formation of character and the development of ability. The reformatory and the penitentiary are for the correction of defects which have appeared in the development of young people. Does the first require any higher abilities than the second class of institutions?

Perhaps there was justification at one time for this difference in the qualifications demanded of the officials in the two kinds of institutions. Once there were no (22) *institutions training men to deal with prisoners*. That time has passed. Scarcely a great university in this country lacks a department of sociology and a department of psychology with a large enrolment

⁴⁴ *Ibid.*, Section 57 06, p. 102

⁴⁵ Osborne, *Society and Prisons* (New Haven, Conn., 1916), Chap. 4.

of graduate students who are being trained to handle difficult personalities. Yet so backward are we in our thought concerning the nature of a prison or a reformatory that we have failed to see the connection between the educational institution called a university and the correctional one called a prison or a reformatory. There are hundreds of young men and young women to-day in the graduate schools of our universities who, had we but the wit to see it, are infinitely better prepared to undertake this delicate and difficult task of guiding back into useful lives the criminals than those who to-day are placed at the head of these institutions and who are serving as the guards and officials therein. May we not hope that the time will soon come when as great attention will be given to the educational qualifications of wardens, guards, and teachers in our correctional institutions as to those of the presidents, deans, and teachers in our colleges and universities?

Japan started the first school for prison officials, England developed a training system for prison officials later, and at the present time the Federal prison service and a few of the States have begun encouraging experiments to provide training courses for prison officials.⁴⁶

QUESTIONS AND EXERCISES

1. Outline the main points in the development of the prison system in England.
2. What was the significance of the Act of 1877?
3. What was the "Progressive Stage" system? Describe the steps in its development
4. When were the treadmill and crank abolished in English prisons?
5. Describe the chief provisions of the Prevention of Crimes Act of 1908.
6. What was the purport of the Mental Deficiency Act of 1913? the Criminal Justice Administration Act of 1914?
7. Outline the chief steps in the development of prisons in the United States since 1845
8. What difficulties arose in connection with Osborne's Mutual Welfare League? See Lawes, *20,000 Years in Sing Sing* (New York, 1932), pp 112-126
9. Describe the method of inmate self-government in the Philippines See Gillin, *Taming the Criminal* (New York, 1931), Chap II

⁴⁶ Gillin, *Taming the Criminal* (New York, 1931), pp 29-32, Hart, *Training Schools for Prison Officers* (New York, 1930).

CHAPTER XX

*PRISON LABOR*¹

THE problem of labor for prisoners has been a most perplexing one from the very beginning. Even before incarceration was used as a secondary punishment, when men were being thrown into the old jails of England for debt or were there awaiting trial, their enforced idleness was one of the chief causes of the demoralization which impressed John Howard.

We have five different conceptions of the purpose of labor in prisons. (1) the alleviation of the tedium of prison life; (2) repression of crime; (3) the production of economic commodities to decrease the cost of support; (4) reformation, (5) prison discipline.

DEVELOPMENT OF PRISON LABOR POLICIES IN ENGLAND

Since Howard published his studies (1777) on Holland's jails the requirement of hard work as an essential part of the discipline of a jail had been recognized in theory. At the opening of the nineteenth century, however, to the ordinary legislator, hard prison labor was looked upon as a deterrent. Those charged with the care of the prisoners wanted chiefly to keep the prisoners busy in order to make prison discipline easy and to lighten the taxes for prison maintenance. About 1805 in a number of the local prisons the female prisoners knit stockings, made twine for fishing nets, and wove hempen cloth. Various handicrafts were carried on in the reformed jails, and some of them became regular houses of industry, with scores of rooms, which earned a profit for the institution. The men worked in tailor shops making clothing, the women in the laundry and in sewing rooms, and in other industries.²

In these early English prisons the chief motives for prison labor were support of the institution and discipline. Some of those interested in the reformation of the prisoners found in prison labor a solution of the problem of reformation. By 1821 it had become apparent to some of the adminis-

¹ For a good discussion of the whole subject see Mohler, "Convict Labor Policies," *Journal of Criminal Law and Criminology*, February, 1925, pp 530-640; Robinson, *Should Prisoners Work?* (Philadelphia, 1931)

² Webb, *English Prisons under Local Government* (London, 1922), p 83

trators that the motive of profit for the support of the institution did not fit in well with the motive of discipline and reformation.³

The burden entailed upon the executive of these jails by the manufacture of goods for profit became so heavy that by 1792 it was urged that the business end should be turned over to contractors. Under the contract system in these English local prisons discipline was destroyed. "The 'farmer,' having no interest in rescuing the prisoners from idleness or reforming them by regularity, only provided work as and when it was profitable to himself. The jailer, who was also a speculator in labor, combined men, women and children in associated employment, irrespective of their mutual contamination."⁴

Prisoners who were good artisans and who could therefore earn the most money or were useful in training others became the jailer's favorites for privileges no matter what crimes they had committed. On the other hand, the poor workers who were of no economic value to the jailer were recommended for remission of sentences or employed merely as wardsmen and cooks. Furthermore, in the course of time, since steady employment was found for the prisoners and free laborers outside often had difficulty in finding employment and since the prisoners were provided with the necessities of life—clothing, food, shelter, etc—while the free laborer often suffered from the lack of these necessities no matter how industriously he worked, it was claimed that labor in these prisons no longer deterred from crime. Moreover, employers outside began to object to the competition of the prisons.⁵

As a result of objection from these various angles to the use of prisoners in profitable employments, the English jailers between 1818 and 1826 turned to the *treadwheel* as a means of conforming to the law of 1824 requiring hard labor.⁶ The treadwheel was invented about 1818 by William Cubbitt for use in the Suffolk County Gaol at Bury. It was sometimes used for grinding corn and the labor of the prisoners was contracted out to millers. More frequently, however, it was used for no productive purpose.⁷ The cheapness and simplicity of this device caused it to be widely copied in the prisons of England when the Industrial Revolution had made hand work unprofitable and when outside manufacturers began to object to the competition of prison-made goods. Moreover, as a deterrent the treadwheel

³ Webb, *op. cit.*, p. 85

⁴ *Ibid.*, p. 86

⁵ *Ibid.*, pp. 87, 88

⁶ The Penitentiary Act of 1779 and the Act of 1824.

⁷ Webb, *op. cit.*, pp. 96 ff

and similar devices were supposed to be more efficacious than productive labor. All the prisoners hated it, and according to the ideas of that time that was a good reason for having it.

In England there seems to have been no difference of opinion upon the desirability of this form of labor, the only discussion being devoted to the number of revolutions to which the prisoners should be subjected. Some of the magistrates kept their prisoners treading from morning till night, while others used the treadwheel only for what they considered wholesome exercise for three or four hours a day.⁸ Some observers believed that the treadwheel was injurious to the prisoners' health; others denounced it as impotent to effect any reformation of the prisoners, while still others believed it had no injurious effect. After a generation of trial, however, it was given up as a cruel device for women. While it furnished an easy means of providing labor as a penal measure, the weight of evidence is that it was very injurious to women and occasionally to men. Moreover, it was personally degrading and had no value as a means of training for vocation or of reformation. The difficulty in the whole problem of penal labor in England as well as in this country was to find a reconciliation between prison labor as a deterrent and as a means of reformation.⁹

In 1846 a new device called *the crank* was invented by a man by the name of Gibbs, of the Pentonville prison. This was a device consisting of a crank attached to a narrow iron drum placed on legs. In the interior of the drum a series of revolving cups scooped up a thick layer of sand at the bottom, carried it to the top and emptied it, to be again caught up by the revolving cups. On this machine a dial plate was fixed which registered the number of revolutions made. A man working at ordinary speed could turn this machine about 10,000 times in eight hours and twenty minutes. In a later form of the crank, instead of the sand a kind of brake was attached by which the resistance could be graded to each individual's capacity. This instrument was widely used in the period when task work was the method of prison labor.

In 1849 Charles Pearson, in a convention of prison reformers in London, proposed a *scheme of prison labor which had for its purpose reformation*. He proposed that the sentence of the prisoner, instead of being so many years and months, should be so many hours of labor, reckoning each day as ten hours and that an hour's work should entitle the prisoner to a halfpenny's

⁸ Clay, *The Prison Chaplain*, 1861, p. 98.

⁹ For a good discussion of the early forms of prison labor in the local prisons of England, see Webb, *English Prisons under Local Government* (London, 1922), pp. 82-100.

worth of food. This suggestion came to naught. In the same meeting, however, he proposed that instead of the government's undertaking to use the prisoner's labor in industry, it should contract his labor out to a manufacturer. Something of the same sort of measurement of sentence by labor was proposed at that same time by Alexander Maconochie, who was at that time governor of the Birmingham jail but who previously had been in charge of Norfolk Island, Australia. In his case, however, the labor system was tied up with a certain number of marks or credits. This system had actually been used in Australia, was in operation to a degree in Ireland, and was introduced by Maconochie into the Birmingham jail when he was governor. Owing, however, to a prison scandal in his jail, he resigned and the whole system went by the board.

In 1850 Charles Pearson advocated *agricultural labor* for the prisoners. His arguments in favor of this method of employment were that it was easily learned, provided considerable variation, was beneficial to the health of the prisoners, was economical because of the few appliances necessary, and produced great returns. At the time, however, this suggestion bore no fruit and the treadwheel, the crank, and other useless forms of labor were continued.¹⁰

In 1894 and 1895 a committee of inquiry into the principles and practices of the prison commissioners recommended the abolition of the treadwheel, the crank, and so far as possible all similar forms of penal labor, and the introduction of productive labor, not as formerly, however, for the sake of profit for the state but because of its effect on the minds of the prisoners. The Prisons Act of 1898 finally adopted the recommendations of this committee and abolished the *treadwheel and crank* from the prisons. It provided work in association after the first month of confinement in a cell.¹¹

PRISON LABOR POLICIES IN EARLY AMERICA

In the early years of the penitentiary system in the United States (1830), de Beaumont and de Tocqueville found that *contractors* had charge of the prison labor in practically all these institutions. They paid the State about half what free labor would cost. The contracts were given for very short periods, a year generally, and there were numerous contracts in each prison so that competition between contractors would give the prison the best possible bargain.¹² De Beaumont and de Tocqueville felt the possibility of prison labor competing with free labor, but decided that for the United

¹⁰ Webb, *op. cit.*, pp. 156, 157

¹¹ *Ibid.*, pp. 155, 157, 207, 222, 225

¹² de Beaumont and de Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), p. 81

States the danger was remote because here there was such demand for products that free labor could not provide a sufficiency. Their discussion was not fundamental, and it did not cover the objections which have since appeared to contract labor in prisons.¹³

De Beaumont and de Tocqueville found in America none of those machines like the treadwheel and crank used in England on which the prisoner worked in order not to be idle. They say, "Labour is not only salutary because it is the opposite of idleness; but it is also contemplated that the convict, while he is at work, shall learn a business which may support him when he leaves the prison. The prisoners therefore are taught useful trades only; and among these, care is taken to choose such as are the most profitable, and the produce of which finds the easiest sale."¹⁴ Would that we had continued that same policy

As early as 1801 a law had been passed in New York to introduce manufactures into Newgate prison; the State was to manufacture and market the goods. It also provided that these goods should be marked "State Prison." In 1804 another law was passed providing that not more than one eighth of the convicts should be engaged in making boots and shoes, exclusive of men and women who had learned the trade before entering prison.¹⁵ Thus already the opposition to prison-made goods was beginning to be felt. During the '30s and early '40s serious objections from the economic standpoint began to appear in New York State but with little effect at that time upon the practice. The Mechanics, however, who were the forerunners of organized labor, objected on the ground that convict labor lowered prices, created an oversupply in some industries, established unfair competition, and crowded out free labor into other occupations. At that time attention was also called to the fact that the contractors enjoyed unusual opportunities for profits under the contract system. It was further urged that convicts were taught trades to the prejudice of the free mechanics by developing apprentices out of the criminal classes.¹⁶

A legislative committee of the New York Assembly for 1841 considered the problem of prison labor because of the opposition of the Mechanics. It opposed their contention and whitewashed the conditions pointed out by their petition to the legislature.

In 1842, however, Mr. Weir, an assemblyman who the year before had

¹³ *Ibid.*, pp. 34, 35

¹⁴ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, 1922), p. 34

¹⁵ *Ibid.*, p. 48

¹⁶ *Ibid.*, p. 332.

introduced a bill seeking to embody the contentions of the Mechanics, was appointed chairman of the Assembly's committee on State prisons. The report of this committee seriously arraigned the contract labor system in the New York prisons and the "silent system" and urged that the prison was a place for punishment and should be supported not by competing with honest mechanics but by a general tax. It had, however, no constructive suggestions for the substitution of other methods for contract labor in the prisons.

This report, however, did point out for the first time two important matters:

1. While disparaging a prison as a reformatory agency, it suggested that the chief field of reformation lay in the social conditions out of which the criminal came. It urged better living conditions, a square deal for labor, and steady employment.

2. It suggested that the inmates produce to the largest extent possible the articles that they themselves could consume or that could be consumed by the inmates of the State Lunatic Asylum. This is the first suggestion of what has come to be called the State Use System.¹⁷

As early as 1828 the Auburn prison, under Warden Powers and his successors, showed the financial possibilities of that system of prison management. In that year the institution had come within \$1,000 of making its total expenses, and Warden Powers in his report recorded his belief that no further appropriation would ever be necessary for the support of the prison. Already in 1796 the legislature in New York provided that the Newgate prison could engage in the manufacture of goods to be sold on the open market. In 1819 a law was passed authorizing the prison authorities to employ convicts upon the roads, streets, and other public works in that city and in the counties of Richmond and Kings. In 1820 the purchase of marble quarries to be worked by convict labor was authorized. In 1817 the legislature had passed a law permitting the employment of prisoners on State canals, and providing for the manufacture of goods for others than the State on what is known as the piece-price basis. In 1821 contract labor in the prisons was authorized by the legislature.¹⁸

The problem of prison labor in the prisons built upon the cellular plan of the Eastern Penitentiary of Pennsylvania was quite a different one. Since each prisoner was to spend his entire sentence in his cell, labor had to be of such a nature that he could do it in the cell. This did very well so long as machine-made goods did not compete with the products of the prison.

¹⁷ *Ibid.*, pp. 144-145.

¹⁸ Lewis, *op. cit.*, pp. 104-106, and Chap. 12.

With the coming of the Industrial Revolution, however, a new situation was created. Therefore the problem of prison labor in the early prisons of the United States arose only in those built on the Auburn plan. In England, where the cellular system was adhered to for a long time, the problem, of course, was quite different.

From the first protest against prison-made goods in New York State the objection of organized labor has been continued up to the present time. To this opposition has been added that of the free manufacturers.

PRESENT SYSTEM OF PRISON LABOR IN THE UNITED STATES

As the result of the historical development just traced there are at present in the United States six systems of employing prisoners, viz.: contract, lease, piece-price, State use, public works, and public account.¹⁹ A seventh system has been suggested, but is not in use.

1. The Contract System. The contract system was early adopted in the United States. When de Beaumont and de Tocqueville visited this country they found the contract system in operation in many of the jails of this country.²⁰ Under this system the State furnishes the buildings, provides power and light, and guards the prisoners. The contractor furnishes the machines and the material upon which the prisoners work and supervises the work.

In such a system you have a divided authority over the prisoners at work. The prison guard keeps order, and in case the prisoner refuses to work or gets into difficulty with the contractor's foreman or does not do his stint, he is reported to the guard for discipline. The contractor's foreman has entire charge of the industrial activities of the prisoners, passes upon the quality of the work, and directs the prisoner as to what he shall do. Unless the guard and the foreman work together, there is bound to be trouble.

Under this system the State is paid a fixed sum for the daily work of the prisoner. The contractor disposes of the goods on the open market in competition with free labor. Inasmuch as the contractor hires prison labor at reduced wages, he has an economic advantage. It is this condition which has aroused most of the opposition to this system, for the prison-made goods come into competition with the products of employers who employ free labor. Under the Hawes-Cooper Act this form of prison labor will probably disappear.

¹⁹ The "States' Use System" is discussed in the next chapter rather than here because it has not yet been established to any large degree.

²⁰ de Beaumont and de Tocqueville, *op. cit.*, pp. 34, 35

2. The Lease System. The evidence at present available indicates that the lease system in the Southern States grew out of the Civil War.²¹

Under this system the State gives up all control of the prisoners and puts them into the hands of the lessee. The State is relieved of all expense in connection with them; it has to build no prisons, it needs to hire no guards. Immediately upon conviction the prisoners are sent to the camp of the lessee, where they are put to work. From the standpoint of the State it is, therefore, the most economical system in use.²²

As a system of penal treatment, however, the lease system has nothing to be said for it. It is a system of slave labor, pure and simple. The State dismisses these convicts from its care and puts them practically at the mercy of the lessees. The system has been condemned universally on the basis of its inhumanity. Brutal foremen often have charge of the camps in which these men are kept, out of sight of other people and entirely at the mercy of the lessee's agents. Shocking stories of cruelty and neglect have characterized the history of this system. For a long time the chief complaints of the evils of the lease system have come from Florida. Most of the convicts were Negroes and were worked in turpentine and lumber camps. Bloodhounds were kept in some of these camps to trail escaping inmates, the convicts were worked in swamps where they were wet all day long, the bunk rooms were long, low compartments filled with iron beds supporting filthy mattresses; they worked barefooted with the consequence that their feet swelled, and because of the dampness in which they worked many of them contracted rheumatism and some died of pneumonia. On January 1, 1912, of 1,421 State prisoners in Florida, 516 had been committed the previous year. The state got \$400 for each man per year. Says a writer in describing one of these camps: "Seven convicts died in this camp in a single year from diseases contracted from standing or working in water up to their waists at all seasons of the year." Prisoners were forced to work even when sick, and the punishment of prisoners who either were unable or refused to work was entirely in the hands of the company leasing the prisoners. The captain of one of these camps told a visitor that he was on the point of shooting a Negro who had refused to work but changed his mind and knocked him down three times with the butt of his revolver. Whatever hospital

²¹ McKelway, "Three Prison Systems of the Southern States of America," in Henderson, *Penal and Reformatory Institutions* (New York, 1910), p. 71. Industry in some of the prisons of this country and of England was leased or contracted to private parties as early as 1798, but that is not the lease system as it developed in the South.

²² *Annals of the American Academy of Political and Social Science*, XLVI, 12 (March, 1913).

facilities are provided must be paid for by the lessees. The idea at the bottom of this system is profit rather than reformation.²³

For State prisoners the lease system has been actually abandoned in all States, although in Idaho and South Carolina apparently it was still authorized by law for both State and county in 1929.²⁴ For county prisoners leasing is still legal in Kentucky and Louisiana. In at least one of the Southern States county prisoners seem to be leased to road contractors.²⁵ The lease system is thoroughly bad as a method of prison labor. No State has any right to abrogate its responsibility for the care of those whom it deprives of liberty.

3. The Piece-Price System. Under the piece-price system we have a situation somewhat different from the contract labor system. In the latter the contractor furnishes the machines and the material and has some responsibility over the supervision of the prisoners. In the piece-price system the State officials have entire charge of the prisoners. They set the speed, determine the quality of the work, and have entire charge of the productive process. They maintain the institution and feed, clothe, and guard the prisoners. The contractor furnishes the material and pays the State an agreed amount for the work done on each finished article accepted by it. Under this system one of the evils of the contract system is done away with, namely, interference of other than prison officials. The competition of the products, however, with free labor on the outside is no less severe than under the contract system. It is subject to the same objections, therefore, from manufacturers and union labor.

4. The State Use System. The State use system is one in which the State carries on manufacturing processes but the products are not sold in the open market. They are manufactured for the use of other state institutions and sometimes for county and city institutions.

This system obviates the objections of free labor and of manufacturers on the outside on the ground that the goods are not put into competition on the open market with the products of non-prison factories. Essentially, however, this system does not do away with competition with outside industries, for whatever products are made in prisons cannot be made by free

²³ Goodnow, "Turpentine—Impressions of the Convict Camps of Florida," *The Survey*, XXXIV, 103-108 (May 1, 1915)

²⁴ *Monthly Labor Review*, March, 1929, pp 129-135

²⁵ *Handbook of American Prisons and Reformatories*, 1929 (New York, 1929), p 724, Lewis, "The Spirit of Raiford—Florida's Substitution for the Convict Lease System," *The Survey*, April 9, 1921, "The Brighter Side of Florida's Penal Methods," *Literary Digest*, July 28, 1923, p 34, "Florida Makes a Beginning," *The Survey*, May 15, 1923, p. 210.

labor. It does, however, do away with *unfair* competition with free labor, which is the ostensible nub of the objection of both manufacturers and laborers to the contract system.

The difficulty with it, however, is that because of the difficulty of administration and the inefficiency of production under this system, other State institutions refuse, whenever they can find an excuse, to buy from the prison and secure their needed supplies from the open market.

Most States with this system do not have a compulsory purchase clause in the laws. Others which have such a clause do not enforce it. It has worked fairly well only in Massachusetts and New Jersey. As a consequence of these difficulties the States using this system have the largest proportion of idle prisoners.

5. Public Works and Ways. The system known as public works and ways is quite like the State use system. According to this plan the labor of the prisoners is not used in the manufacture of articles of merchandise but for the construction and repair of the prison or other public buildings, roads, parks, breakwaters, or other permanent public structures.

This system, used early in the Walnut Street Jail in this country and in the hulks in England, is now most extensively employed in the South. There the so-called "chain-gangs," county and State, build and maintain the roads. In a few States public buildings and other public works are constructed by prisoners.

This system competes with contractors employing free labor but has not encountered bitter opposition in the South, where labor is not well organized. In the North the road contractors object to its authorization by the legislature. Also the State is loath to provide the funds necessary to buy the equipment necessary to carry on modern road and building construction. Colorado from 1908 to 1928 carried on a road-building program very successfully, and to-day California has such a program in full swing with selected men from San Quentin.²⁶

6. Public Account System. The public account system is one of frank production for the market. The prison is really a factory, as it is

²⁶ For a detailed account of this experiment in the various States of the United States see "Good Roads and Convict Labor," *Proceedings of the Academy of Political Science in the City of New York*, Vol IV (January, 1914), *Convict Labor for Road Work*, Bulletin No 414, United States Department of Agriculture (Washington, 1916); Tynan, "Prison Labor on Public Roads," *Annals of the American Academy of Political and Social Science*, XLVI, 58 (March, 1913), Pratt, "Convict Labor in Highway Construction," *ibid*, p 78, Asher, "County Road Camps in Arkansas," *ibid*, p 88, Bryant, "Outdoor Work in Michigan," *ibid*, p 90, Cooley, "Good Opportunities for Prison Labor," *ibid*, p 92; Marker, "Experimental Road Work in Ohio," *ibid*, p 99

under the contract and the piece-price systems, but under the public account system it becomes also a marketing agency. The institution not only furnishes the buildings, power, and light and feeds and guards the prisoners, but it conducts the entire business from the buying of the raw material and equipment of the factory to the selling of the finished product in the market. Whatever profits or losses are entailed are the State's.

This system has been in operation in some prisons from the very beginning of the prison system in this country. In recent years it has had a new expansion in some of our prisons. For example, in Minnesota and Wisconsin, the manufacture of binder twine for harvesting machinery has been a great success. In Minnesota and other States the making of farm machinery has proved successful. In still others, various commercial products are made and sold in the competitive market.

There is no objection on the part of free laborers so long as the products made on the public account system are monopolized, non-unionized products.

Extent and Productivity of the Various Systems of Prison Labor. At irregular intervals since 1886 the Census Bureau of the United States has published figures on prison labor. The table on pages 316-317 constructed from these reports by Mr. Gill, formerly superintendent of the State Prison Colony, Norfolk, Massachusetts, and modified by myself, shows the number of prisoners and the value of the products at the time each of these studies was made.²⁷

It is clear from this table that during the forty-seven years covered by these studies of the Bureau of Labor striking changes took place in the relative numbers of convicts employed under each type of prison labor, and in the relative value of the products. The lease system has entirely disappeared as a type of labor for convicts in the State and Federal institutions. The value of goods produced by prisoners employed on public works-and-ways and in State-use industries has gained on that produced by the prisoners employed in other types of prison labor. From another table in the last report of the Bureau of Labor the per cent of convicts employed under these various systems of labor shows much the same shifting to public works-and-ways and to State-use. However, with this shift there has occurred a steady decrease in the proportion of the total number of prisoners productively employed: from 75 per cent in 1885 to 52 per cent in 1932.²⁸

²⁷ "The Prison Labor Problem," *Annals, American Academy of Political and Social Science*, September, 1931, pp. 84, 85.

²⁸ *Prison Labor in the United States: 1932*, Bulletin of the United States Bureau of Labor Statistics, No. 595 (Washington, 1933), pp. 5, 6.

VALUE OF GOODS PRODUCED AND NUMBER OF CONVICTS

System	1885		1885 (REVISED) ^b		1895	
	Value of goods produced	No of convicts employed	Value of goods produced	No of convicts employed	Value of goods produced	No of convicts employed
Public account.	\$ 4,086,637	14,827	\$ 2,063,892	.....	\$ 4,888,563	13,410
Contract	18,096,245	15,670	17,071,265	.....	8,190,799	10,599
Piece-price	2,379,180	5,676	1,484,230	.....	3,795,483	7,537
Lease	4,191,935	9,104	3,651,690	.....	2,167,626	6,869
Public works and ways .....	.....	.....	.....	.....	.....	.....
State use .....	.....	.....	.....	.....	.....	.....
Total	\$28,753,997	45,277	\$24,271,078	30,853	\$19,042,471	38,415

^a *Convict Labor* (1886), p 171; (1896), p 470; (1905), p 305. *Prison Labor* tics No. 595 (Washington, 1933), p 6.

^b Data for 1885 and 1905 included State prisons, reformatories, and county prisons and reformatories. The 1896 report showed revised figures for 1885

PRISON LABOR SYSTEMS IN OTHER COUNTRIES

The Department of Commerce's report on *Prison Industries* in 1929 says that of the countries from which it was possible to get information England and the British Dominions of Australia, Canada, and New Zealand, and also Belgium, France, Germany, and Italy give first consideration to the state-use system of prison labor. Canada and New Zealand employ no other system.²⁹ In the others some contracts are permitted and public works and ways employ some of the prisoners. In *Australia* the lease system is gone, while the piece-price and contract systems are dying out. In *Belgium* in addition to the state-use system the contract system is allowed. Thirty-five per cent of the prisoners in 1925 were employed under the state-use system. In *England*, while goods made in the prisons may be sold on the market, practically all prisoners are engaged in making articles for the government, mostly mail-bags and articles needed for the army and navy.³⁰ In *France*, while most of the work is under the state-use system, some work is done by the prisoners for contractors on the piece-price system. On the whole, however, prison labor in the French prisons, when I visited a number of them in 1928, was carried on in the individual cells largely by hand and was quite

²⁹ *Prison Industries*, Department of Commerce Series, No 27 (Washington, 1929), pp 19, 20.

³⁰ *Ibid*, p 80, and Gillin, *Taming the Criminal* (New York, 1931), p 252

EMPLOYED UNDER EACH SYSTEM OF PRISON INDUSTRIES^a

1905		1923		1932		Per cent of total goods produced	
Value of goods produced	No of convicts employed	Value of goods produced	No of convicts employed	Value of goods produced	No of convicts employed	1923	1932
\$ 4,748,749	8,530	\$16,421,878	13,526	\$12,367,646	15,249	21.6	16.4
16,642,234	16,915	18,249,350	6,083	6,060,062	4,355	24.0	8.0
3,239,450	3,885	12,340,986	3,577	10,522,200	9,081	16.2	14.0
3,093,764	3,654	(None)	(None)	(None)	(None)	..	..
2,886,887	6,144	15,331,545	9,763	25,159,152	18,697	20.1	33.4
3,665,121	12,044	13,753,201	18,850	21,260,411	34,894	18.1	28.2
\$34,276,205	51,172	\$76,096,960	51,799	\$75,369,471	82,276	100.0	100.0

in the United States: 1932, Bulletin of the United States Bureau of Labor Statistics. The reports issued in 1896 and 1923 included only State and Federal comparable to 1895

unproductive. In *Germany*, the attempt is made to employ as many as possible in making goods for the state. The Department of Commerce in its report in 1929, however, points out that state use in the Berlin and Brandenburg prisons occupies less than half of the prisoners productively employed. There were 3,300 prisoners working for 200 private contractors.³¹ However, in some of the German States when I visited the prisons there I found an attempt to extend the farm work and the truck gardens, and to carry on productive and instructive work on diversified industries as much as possible for the State and municipalities, but there was also contract work in order to keep the men occupied. I was impressed that there was very little idleness in the German prisons. In *Italy* in addition to contract work some of the prisons are leased to private parties but with rigid regulation of the conditions under which the work is done.³² Italy recently has developed some farm colonies of outstanding merit. Likewise in *Japan*, while prisoners are employed primarily on products for the government, contracts may be let with the consent of the Minister of Justice. Farm work, construction, and other forms of the public works and ways system are in operation.³³ In the *Philippines* in 1928 there were no idle prisoners. Bilibid was a great industrial

³¹ *Prison Industries*, pp 82, 83

³² *Prison Industries*, pp 83-85

³³ Gillin, *Taming the Criminal* (New York, 1931), pp 14-16

prison. No contracts existed, but production of goods for sale on the market existed on an unprecedented scale. The production of furniture was the largest single industry. The raw material was cut and prepared for finishing at the penal colony at Iwahig on the Island of Palawan. The finished product was made at Bilibid. In addition a large agricultural program was in operation at the San Ramon prison and farm colony on Mindanao and at Iwahig. Much of the products was used in the prisons and by the state, but the surplus was sold on the open market³⁴ In *Ceylon* there exist state-use and public account systems. In addition to articles for use in the government departments all sorts of needed articles are made for the state railways. Laundering for the government departments, the hospitals, the asylums for the insane, the railways, and the police is done at the Welikada prison. The weaving of all the sheets, towels, handkerchiefs, and cloth for clothing manufactured for the inmates of government institutions and on public account is done in two of the prisons.³⁵

In general, outside of western Europe and the United States *the opposition of free employers and of union labor* does not cut much figure in the prison labor problem.

So far as *employment of prisoners outside of prison walls* is concerned the most significant operations are to be found in Germany in connection with the prison systems in Hamburg, one or two places in Prussia, and Bernau in Bavaria; in Russia, at Witzwil, Switzerland; at Merxplas, Belgium (for young adult offenders); in the Philippines; in India (for the Criminal Tribes); in Italy; in our Southern States; at Guelph, Canada; and to an increasing extent in prison camps and farms in some of our Northern States.

QUESTIONS AND EXERCISES

1. What five different purposes of prison labor have been advanced?
2. What are the purposes back of the treadwheel, crank, and other non-productive forms of prison labor?
3. Evaluate the theory that "prison labor must be distasteful in order to deter men from committing crime in order to get into prison."
4. What purposes do you think should inspire policies of prison labor?
5. Outline a system or systems of prison labor adapted to such prison populations as we have in most of our prisons—poorly educated, most of them without a trade, a certain percentage of them mentally abnormal, and most of them sentenced for not more than two years.

³⁴ Gillin, *op. cit.*, Chap II

³⁵ *Ibid.* pp 75-81

6. Is opposition to prison labor sound on the basis that it competes with free labor?
7. If the competition with free labor is "unfair," in the sense that prison-made goods are produced at less cost and can therefore undersell goods made with free labor, should it be permitted?

CHAPTER XXI

SOME UNSETTLED PRISON LABOR PROBLEMS

IN spite of more than a century of experience with prison labor, the subject bristles with unsettled problems. This experience has settled some questions; it has suggested solutions for others, while still other problems remain apparently without any hint of a solution.

In the *class of problems which have been settled* are:

1. In the interests of economy, the welfare of the prisoner, and prison discipline, the prisoner must be kept busy at useful labor
2. To carry out these objects, prison labor must be not in solitude but in association
3. The incentive to labor must not be the whip but positive inducements¹

Among the *questions which the experience of the last century has helped to bring nearer to solution* are:

1. Positive inducements such as privileges, reduction of sentence, and wages increase economic production
2. Experience with contract labor suggests that other systems will probably displace it
3. A proper labor system contributes to the improvement of prison discipline and the health of the prisoner
4. Prisoners must be classified according to their ability to do a certain amount of work and their adaptability to different kinds of work if the utmost production possible is to be secured from them

5. Outdoor work on farms, roads, and other improvements of land is suggested because of the adaptation of this kind of work to the low capacities of certain prisoners and the better health of those who work outside prison walls

Among the *problems which are not yet settled* and for the settlement of which we must wait on further experience are:

1. Determination of the best system of prison labor, taking into account all the purposes of such labor

¹ In spite of this, however, only ten States in the whole country in 1923 prohibited by law the flogging of prisoners. *The Survey*, May 15, 1923, p. 210.

2. The unproductiveness of prison labor. While under the contract system it has been shown that prison labor can be nearly as efficient as free labor, so far under the management of the prison authorities most kinds of prison labor are inefficient

3. The relation of prison industries to free industries. Both the manufacturers and the workers outside oppose a prison industry policy which leads to ruinous price-competition

4. The problem of reconciling productivity with the reformatory purposes of the correctional institution

5. The problem of the payment of a wage to prisoners

Let us look more closely at some of these unsettled labor problems.

Present Inefficiency of Prison Labor. The inefficiency of prison labor has long been a matter of comment both by independent observers and by prisoners. Writing of San Quentin's jute mill, Donald Lowrie says:

"There are nearly two thousand men confined at San Quentin, eighteen hundred of whom are able-bodied, capable of discharging a good day's labor. Eighteen hundred able-bodied men should support a community of eight or ten thousand persons in comfort and plenty. Yet these eighteen hundred able-bodied convicts, fed on the coarsest food, clothed in the cheapest manner, and housed like dogs, cost the state of California an average of \$200,000 a year to keep in prison."²

Says a recent writer:

"If 75,000 men, mostly unskilled, but the majority of them able at all times to do good work, were at your disposal and you had absolute control over their employment and the proceeds thereof, your only outlay being to supply them with ample food, clothing, and shelter, and see that they had the humane care and consideration to which all laboring people are entitled—if you were in this position and all the income over and above what it took to maintain these men were your own, you would think yourself an exceedingly poor business man if within a very few years you are not independently wealthy, would you not? If, in addition to these men's labor, you also had given to you gratis the use of 135,000 acres of land worth \$30,000,000, buildings, industrial and non-industrial, valued at \$65,000,000 and \$4,000,000 worth of machinery and tools, the only condition to the gift being that you use the land, buildings, machinery, and tools in the judicious employment of your 75,000 men, you would think that within 25 years few men, indeed, would be able to boast a larger fortune than you, would you not? And yet, with some more or less material qualifications, such has been the situation of the penal institutions in the United States for more than 30 years, and, far from being a source of profit, they have been sinking money for the

² Lowrie, *My Life in Prison*, p. 64.

federal and state governments at the rate of from \$7,500,000 to \$10,000,000 a year.”³

May not this inefficiency be explained in part by the *character of the inmates?* Says a recent prison survey report.

“A large section of the prison population consists of custodial rather than punitive cases. The prisoner who is mentally or physically unable to cope with the conditions of a free society should not be allowed to complete the cycle of commitment, release, and recommitment, and indulge between times in a criminal career as the only means within his knowledge of obtaining a livelihood. . . . It is believed that before any great advance can be made in the training of prisoners the mental deficient must be sorted out, segregated, and dealt with as a separate unit. Elementary, advanced, and industrial education, wage incentives, self-government, and parole measures will be of little avail with this class of prisoners, whose mental limitations prevent them from taking advantage of any privilege or opportunity.”⁴

May it not also be due to the *methods of discipline and management* used in the prison? “Smoky” in San Quentin Prison, expressed this point of view as follows.

“What I can’t get through my nut is why two thousand able-bodied men cost the State \$100 a year apiece. If we had a little town of our own outside we’d have our families and children, an’ good food an’ decent clothes, an’ theatres an’ fire department and everything else, an’ we’d all be comfortable, an’ some of us would have money in th’ bank, an’ we’d send our kids to school, an’ all that. By workin’ ev’ry day we’d support five ’r six thousand people besides ourselves, an’ yet in here, livin’ like dogs in kennels, an’ eatin’ th’ cheapest grub they can get, it costs th’ State a quarter of a million dollars a year t’ keep us. There’s somethin’ rotten somewhere. If they’ll let us guys work an’ pay us f’r it, an’ make us pay f’r what we got, y’r’d see a big difference. Y’r wouldn’t see men comin’ back, an’ y’r’d see lots of ‘em go out an’ take their proper place in th’ world. They’d have th’ work habit then, because they’d know that work brings a man all that makes life worth while.”⁵

The Attitude of Union Labor and Employers of Free Labor toward Prison-made Goods. Another problem of interest to-day in prison labor is the hostile attitude of union labor toward the various prison labor

³ Smith, “Efficiency in Reform and Prison Administration,” *Journal of Criminal Law and Criminology*, XI, 587 (February, 1921)

⁴ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), p. 104

⁵ Lowrie, *op. cit.*, pp. 287-288

systems.⁶ This attitude of hostility on the part of organized labor has continued in certain respects, but the direction of the hostility has been somewhat modified. While in the early period of prison history in the United States organized labor was opposed to all prison industries which came in competition with those in which free laborers were employed, more recently their attack has been centered upon contract labor. It was at the suggestion of union labor that New York State adopted the State Use System in 1894.⁷

Both organized labor and manufacturers without prison contracts agree that contract labor in prisons is bad social policy. It is bad for the manufacturer because it subjects him to *unfair competition* in that goods made under prison contracts can be sold on the market for less than those manufactured by free labor. Labor objects to it because it enables the holder of the prison contract to manufacture goods and sell them at prices which force the manufacturer of the same line of goods, employing free labor, either to reduce wages or to stop production. It is the claim of labor that if prison-made goods were sold at the same prices as those manufactured with free labor, it would have no objection to prison labor. That is the reason why union labor has been in favor of the State Use System.⁸

The difficulty with the State Use System has been that the articles for State use have not been standardized and the purchasing has not been centralized. Consequently, it has not been possible to make use of the market available in a State for the products of the prisons. Says a survey of the New York prisons:

"The administration of the 'State use' system in New York State, while having many features to commend it, falls far short of carrying out the principles of prison reform advocated by the New York State Federation of Labor.

"When the State use system was inaugurated under the provision of the constitutional amendment in 1897, second-hand machinery was purchased and some of this machinery is still in use. These machines are obsolete, and the prisoner who learns to operate them finds upon his release that he is not competent to seek employment in an outside up-to-date shop, where modern machinery is in use.

"The prison shops at present limit their output to a few commodities, and even these are not standardized. For this reason and because some of the products are so poor in quality, many of the State institutions do not purchase from these industries. The State institutions are not purchasing all they should under the laws. There is a good opportunity to enlarge the market under the State use plan

⁶ Commons and associates, *History of Labor in the United States* (New York, 1921), p. 282

⁷ Whitin, "The Prisoner. Public Servant," *The Survey*, October 15, 1923, p. 70

⁸ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), pp. 87-89

for standardized goods. Other shops should be started so as to supply the needs of State institutions, thereby furnishing useful and educational work for the prison population."⁹

All States are not as populous and therefore may not furnish as good a market for prison-made goods as New York. Moreover, some prisons already have established certain industries different from those in the prisons of other States. Therefore, it has been suggested that a number of States in the same general region centralize purchasing and that each State buy from the prison of another State those articles which are not produced in its own prison. This is called the "*States' Use System*" in contrast to the former "*State Use System*".¹⁰ The attempt to carry this plan out for a number of States has been undertaken by the National Committee on Prison Labor. In April, 1924, occurred the first conference of the Committee on Allocation of Prison Industries, at Salt Lake City. This conference faced the fact that while in 1923 prison industries had produced \$69,985,218 worth of goods, only \$26,522,700 were put to State use. The balance, amounting to \$43,462,518, was sold on the open market. The logical thing, therefore, said this conference, was that when the market of any one State was not large enough to absorb the output of its State prison, the Committee on Allocation should endeavor to allocate the prison industries and to interchange surplus production between States so that none of the surplus products of the prison would go upon the general market. The plan is to have certain of the States make one product, just enough to supply the demands of the State institutions in the group, while other States produce other products and to have the surplus of each State exchanged with the other States in the zone.¹¹ So far little progress has been made in getting States to coöperate in this scheme, and experience with the States' Use System up to the present indicates that in practice it also is no solution of the problem.¹²

If the State is to be kept out of the market in the sale of the products of its prisons, it seems probable that more attention must be given to the business management of the prison industries than has yet been provided

⁹ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), pp. 86-87. The constitutional amendment was passed in 1894, the first practical attempt to carry it out was in 1895, and State use finally became a settled policy in 1897.

¹⁰ Whitin, *op. cit.* See also *The Survey*, October 15, 1923, pp. 69-71; Whitin, "Self-supporting Prisons," *Journal of Criminal Law and Criminology*, August, 1924, p. 323.

¹¹ *Monthly Labor Review*, IV, 204, 205 (September, 1924).

¹² *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), p. 10.

in most States. The New York Prison Survey Committee in 1920 recommended that that State under the State Use System undertake to make use of the market which is available to meet the demands of the various State institutions and political subdivisions. The study in which the recommendation was made showed that while there was a possible market amounting to over \$20,000,000 in the State departments and institutions in the cities of New York and Buffalo alone, the State was producing in all its prisons only a fraction of that amount. Massachusetts has most successfully operated the State Use System.¹³

The Hawes-Cooper Act. On January 19, 1929, the Hawes-Cooper bill became a Federal law. This act was aimed at the elimination of prison-made goods from interstate commerce into those States which forbid the sale of goods made by prisoners under certain conditions. The law provides "that all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal and/or reformatory institutions, except commodities manufactured in Federal penal and correctional institutions for use by the Federal Government, transported into any State or Territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in such State or Territory be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise."¹⁴ This act was the result of the efforts of the American Federation of Labor, the Manufacturers' Conference on Prison Industries, the General Federation of Women's Clubs, the National Committee on Prisons and Prison Labor, the United States Chamber of Commerce, and other similar organizations. It is aimed primarily at the contract and piece-price systems but also at the public account system. Already sixteen States have laws requiring that prison goods be labeled as such, and in seventeen States the contract system is illegal.¹⁵ This law has been held Constitutional by the Supreme Court, and tends to lessen the productivity of the State prisons and reformatories. The law has created a situation which will be difficult. It will enforce changes in prison labor which will be almost revolutionary. Whether its results will be good

¹³ Robinson, *op. cit.*, p. 102.

¹⁴ Robinson, *Should Prisoners Work?* (Philadelphia, 1931), p. 109.

¹⁵ *Laws Relating to Prison Labor in the United States as of July 1, 1933*, Bulletin of the United States Bureau of Labor Statistics, No. 596 (Washington, 1933); *Monthly Labor Review*, November, 1934, pp. 1122-1128.

or bad only experience can tell. If it makes prisoners idle without resulting in methods of employing them at useful labor, it must stand condemned.

Prison Labor under the New Deal. Upon the introduction of codes of fair practices under the National Industrial Recovery Act, both Labor and Industry saw an opportunity to regulate the sale of prison-made goods in the open market. On April 19, 1934, the President by executive order approved the compact of fair competition for the prison industries of the United States. It provides that no persons under sixteen years of age shall be employed in prison industries, that no person under eighteen years of age shall be employed in prison industries of a hazardous nature or those dangerous to life, that the hours of prison labor shall be limited for each prisoner to forty hours per week, and that prison products shall not be sold at prices lower than the fair current prices prevailing in the market in which the product is customarily sold. To date (December, 1934), thirty States, the District of Columbia, and the Department of Justice of the United States have signed this compact.¹⁶

Prison Farms and Other Outdoor Work. Outdoor work for prisoners has been increasing throughout the world in the last twenty-five years. The lease system in the South was outdoor work. With the gradual disappearance of the lease system the South began to develop State farms for prisoners. With the good-roads movement following the wide use of the automobile in this country, road work very greatly increased.

Even during the practice of penal transportation, most of the work was outdoor work. With the substitution of prisons for penal transportation, labor tended to be concentrated within walls. At the present time from considerations of health and the difficulties of prison labor in prison industries, again emphasis is being placed upon outdoor work. Not only the Southern States but the Northern as well are developing farms on which the prisoners work, and in some of the Southern States road work occupies the time of nearly half the prisoners¹⁷

In the Philippines about half the prisoners are engaged in outdoor work. In India the criminal tribes are occupied partly in farming or forestry work. Canada's reformatory for young men is largely an agricultural colony. In Germany, especially in Bavaria, in Hamburg, and in certain parts of Prussia, an increasing number of prisoners are being worked in the open. The farm colony is one of the outstanding features of the Russian prison system.¹⁸

¹⁶ *Monthly Labor Review*, November, 1934, pp 1129, 1130

¹⁷ Gillin, *Taming the Criminal* (New York, 1931), Chap 9

¹⁸ See Gillin, "The Prison System of Modern Russia," in Davis (editor), *The New Russia* (New York, 1933), Chap 13; Gillin, "Russia's Criminal Court and Penal System," *Journal of Criminal Law and Criminology*, May-June, 1933, p 290 ff

Even before the World War experience had shown that open-air work possessed greater efficiency than any other form of prison labor. In 1905 the United States Bureau of Labor showed in a report that in farming prison labor had 75 per cent of the efficiency of free labor. In road work the efficiency was 99 per cent, and in lumbering 107 per cent. This was rather remarkable in view of the character of the prison population. It was especially striking in view of the fact that the efficiency of indoor occupations in the prison ranged from 60 per cent in boot and shoe manufacturing to only 45 per cent in the manufacture of chairs, tables, etc. It must not be forgotten, however, that in this study most of the outdoor industries showing the high efficiency of outdoor labor by prisoners were located in the South, and conducted chiefly under the lease system¹⁹

In a number of the Southern States only those awaiting execution and disabled prisoners are kept in the prison, while the great majority of criminals are working on the prison farms in various parts of the State, or upon the roads.

Prison authorities vary in their estimates of the proportion of the present prison population that could with safety be worked outside the walls. Estimates vary from 10 per cent to 60 per cent or more. It seems probable that with careful selection a much larger proportion than most prison officials now think possible can be engaged on outside work. A recent study showed that of 12,261 prisoners in outside prison colonies less than 1 per cent escape.²⁰

Three distinct benefits result from working prisoners in outdoor occupations: (1) economic, (2) health, (3) educational.

1. Economic Benefit. The economic advantages consist in the provision of large quantities of farm and dairy products for the use of the inmates. In 1919 approximately \$300,000 worth of food was used in the prisons of New York State, \$530,000 worth by the charitable institutions, and more than \$500,000 worth by the hospitals. It has been estimated that the value of farm products used in all the institutions of the State of New York amounts to \$2,500,000.

In most of our prisons the prison farm does not raise enough produce for the inmates of the institution, to say nothing of providing supplies for the inmates of other State institutions. From the purely economic side, however, here is a field for the employment of prison labor, even upon the State Use

¹⁹ *Twenty-fifth Annual Report of the Commissioner of Labor, 1905* (Washington, 1906), pp. 28-31, 416, 417

²⁰ National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole*, pp. 74-76, 100-102

Plan, which is quite undeveloped. How large a proportion of the men in any prison could be employed upon farms is a question which must be left to experiment to determine. Moreover, under this plan there is a great saving to the taxpayers in the cost of buildings, guards, and equipment.

2. Health Benefit. There should be no question that from the standpoint of the prisoner work in the open is of great benefit. In a number of the States the men employed upon the farms do not return to the prison each night but live in camps or in a farm-house. For a certain percentage of the men in prison the activities outside have an appeal which no industry supplies. Many of them enjoy gardening, raising poultry and small fruits, the care of animals, and other varieties of farm work. Of course it would be distasteful to some men to be put to work upon the farm.

3. Educational Benefit. For the class of men who like outdoor work and whose mentality is not suited to the learning of a trade, the prison farm provides a means of vocational education fitting them to obtain positions suited to their capacities upon discharge. There is a certain percentage of men in a prison who could become good farm-hands and some of them perhaps independent farmers if they were given proper training. The physical and mental value of farm work has been demonstrated in the case of the insane and feeble-minded and for men adapted to farm work in the prison it is a means of education that is of the greatest value in preparing them for an honorable occupation on discharge.²¹

A carefully thought-out system of prison labor would provide outdoor work of a constructive nature in many of our States which have public lands which need development. In such of our States as have cut-over lands where it is desirable to reforest certain areas, many prisoners could be used for this purpose. In New York State, for example, 1,900,000 acres are owned by the State in the Adirondack and Catskill mountains. Since that State has a reforestation program under the Conservation Department, there is no reason why some of the prisoners should not be employed upon this project. The same is true of many other States. Minnesota, Wisconsin, and Michigan have large areas from which timber has been cut off, much of which is not valuable for farming land and should be reforested.

The Reconciliation of Productivity with Reformation. The old problem of how to reconcile economic production with the purpose of rehabilitating the prisoner is still with us. The prison is at the same time a factory and a school. Up to the present time these two functions have not made a very good team. Can they be made to pull together? There seems

²¹ Report of the Prison Survey Committee, State of New York (Albany, N. Y., 1920), pp. 91, 92.

to be no inherent reason why they cannot. The amount of classroom work necessary to train men for useful industry is not great, if those in charge of their occupations have the educational purpose in mind. Occupations in a prison may have vocational value, if the officials in charge keep the training purpose in mind. The answer is in the selection of the prison officials. Good business management and training must go together. However, to reconcile these two purposes certain classifications must be made. The mentally abnormal must be segregated and given special training. The mentally normal can then be trained together along vocational lines suited to their greater capacity to learn and to produce.

PAYMENT OF WAGES TO PRISONERS

Closely connected with prison labor, prison management, and prison discipline is the question of the payment of wages to prisoners. In the attempt to discover motives in the prisoners which will induce good conduct and maximum production, various devices have been tried. The fear of punishment has been chiefly relied upon to promote industry. Gradually, however, efforts are being made to discover within the prisoner himself motives which will actuate him to good conduct and industry. It is now believed that the ties of home and family supply such motives. Says an English writer who has had large experience with criminals:

“‘Absence makes the heart grow fonder,’ and not a few, even of seemingly hardened criminals, give proof of real fondness for wife and bairns. And such men would work with a will if they knew that, week by week, a share of their estimated earnings reached their homes. . . . Prisoners would thus be kept in touch with their families during imprisonment, and they could look forward to joining them on release, instead of, as too often at present, having to search for them on the streets or in the workhouse.”²²

The attempt is now being made in a number of our States to try out this method.

What Suggested Payment of Wages to Prisoners. The social motive of society’s regard for the welfare of the prisoner’s dependents also has suggested that if possible the prisoner should be paid a wage. It is sad to see a man taken away from the community to a prison. He disappoints all his honest friends. He is a sign of the failure not only of himself, but of his home and his city. But how much sadder is the spectacle of his family! He has been in some cases the support of an old parent, or of a wife and children. What can surpass that tragedy? Bad as it is for him, it is

²² Anderson, *Criminals and Crime* (London, 1907), p. 153.

not so tragic as for his family. He goes to a community of men like himself. He is surrounded by those in a like sad state. Misery has company. The blight is upon them all. But he has left behind him relatives who must live in the midst of those having no son or husband or father in prison. His relatives must go on with life in the midst of glances and whispers of their neighbors. They may be glances of pity, but pity for shame. His relatives are those of a felon. No one has voiced this situation better than a felon in one of our State prisons.²³

"They've taken him to prison, but she has no place to go—

A grave alone could hide and hold the fearsomeness I saw,
 O wide strange eyes and tight-clenched hands! hands clean and white as snow,
 Tight-clenched on thorned eternity, condemned by life and law
 The prison doors are high and wide, and farther in its gloom,
 And men go by these iron doors to rest within the shade,
 His sin is taken to a place where it may find a tomb—
 Her heart must bear the shadow—and the Thing will not be laid"

Moreover, often the convict leaves behind him a family with no means of support. The wife and mother must go to work except in those States in which a mother's pension is provided for her.²⁴ In the other States the children often must be supported by charity if the mother cannot work. The wife and children are denied the comforts and opportunities which they should have to make a home in which the children may grow up to useful citizenship. While he is supported by the State, fed, clothed, provided work, and kept in fairly comfortable quarters, his family suffers the deprivations of poverty. While he may have been a poor support before he went to prison in some cases, in many cases his incarceration brings undoubted hardship upon the family. These are the cases which appeal to the deepest feelings of humanity and excite the concern of all who wish to preserve the family stricken by disaster of any kind.

The Development of Payment of a Wage to Prisoners. We find reference to payment of wages to inmates of the houses of correction in a law passed by the Massachusetts Colony in 1699.²⁵

Pennsylvania passed a law in 1790 providing for a public account system of labor in the Walnut Street jail in which payment of wages to the prisoner

²³ Stell and Null, *Convict Verse* (Fort Madison, Iowa, 1908), p. 43.

²⁴ Thirty-four States and the District of Columbia have this provision in their laws. Lundberg, "Mothers Aid," in *Social Work Year Book*, 1929 (New York, 1933), pp. 306 ff.

²⁵ Cited in Robinson, *Penology in the United States* (Philadelphia, 1921), p. 178.

was outlined. He was to be paid one half of any surplus remaining after deducting the cost of raw materials and expense of maintenance.²⁶

Soon after the establishment of the prison system, the payment of a wage was suggested. It seems to have originated in Europe. De Beaumont and de Tocqueville, visiting this country in the early '30s of the last century, were struck by the fact that while in Europe the prisoners were paid a wage for their work, here in the United States no such thing was done. They say, "In our prisons, as well as in those of the greater part of Europe, a part of the produce of their labor belongs to the prisoners. This portion, called the *pécule*, is more or less in various countries; in the United States it does not exist. There the principle is adopted, that the criminal owes all his labour to society, in order to indemnify it for the expenses of his detention."²⁷ In 1832 Archbishop Whately recommended that the prisoner in England be paid a wage.²⁸

The denial of this *pécule*, or "over-stint," as it was then called in the United States, appeared to the Frenchmen as "excessively severe." They ask, ". . . where would be the inconvenience in giving a slight stimulus to the zeal of the convict, by a small reward to his activity? Why should we not give him in his solitude, and in the midst of his sufferings, an interest in a gain however small, yet to him of immense value?"²⁹ Here is a gleam of insight into the fact that men cannot be reformed for life in society by isolation and denial of all the motives which dominate men in their free life, but by keeping strong such ties as the family, which make men good citizens outside prisons.³⁰

The suggestions in this book did not bear fruit for some time. There was objection to a wage on the ground that it would contribute to laziness and dissipation after discharge. Up until 1841 in the Eastern Penitentiary of Pennsylvania no compensation was paid. All prisoners were subjected to the same régime, and the only reward they received was approbation for good conduct and good work. After 1841 the prisoner was given compensation for an "over-stint." A moderate task which was estimated to cover the actual cost of his maintenance was required of him. The value of the balance was credited to him and paid to the prisoner upon his release. In 1841, \$884.22, an average of \$28.52, was allowed to thirty-one prisoners on discharge.³¹

²⁶ *Ibid.*, p 179

²⁷ de Beaumont and de Tocqueville, *op. cit.*, pp 36, 37

²⁸ Whately, *Thoughts on Secondary Punishments* (London, 1832), p 36.

²⁹ *Op. cit.*, pp 37, 38

³⁰ de Beaumont and de Tocqueville, *op. cit.*, p 164

³¹ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany 1922) p 220

These early attempts in America to stimulate the prisoner by appeal to economic motives were given up on the plea that the prisoner's labor was forfeit to the State. It was felt that the prison would not be sufficiently deterrent if the prisoner were paid anything. Furthermore, was he not sentenced to prison at hard labor? He was an outcast not fit to be at large in society and to all intents and purposes was the slave of the State. It was argued that money given to him at his discharge would aid the dissolute ex-convict to perpetrate further crimes and enable him to live without immediate application to work. Therefore, only a pittance of a few dollars was paid to him when discharged to enable him to reach the community from which he had been committed.³²

The development of contract labor in the prisons has led to the re-introduction of payment to prisoners for an "over-stint." What the decline of contract prison labor will do to this wholesome practice remains to be seen.

Wage Payment to Prisoners in England. Before 1877 in certain of the English prisons, when they were still under the control of the local justices, prisoners were paid regular wages for their work. Preston and Southwell prisons are examples. This payment was supposed to be 50 per cent of the profit accruing to the prison from the labor of the inmates. Since that date this practice has been discontinued, although up until 1913 a small gratuity was paid each prisoner. This was not considered, however, a payment for work done and was abolished in that year as ineffective, both as a means of charity and as a method of securing the good conduct of the prisoners. A study of the English prisons in 1922 shows, however, that there was a considerable body of opinion among the witnesses who were brought before the committee in favor of the payment of wages. While the superior prison officials were against the plan, one governor expressed the opinion that such a system would be welcome. He was moved to this opinion by the fact that at present the wives and children of the inmates are punished most.

Payment of Wages to Prisoners in Other Countries. In a number of countries it is now the policy to pay wages to prisoners. The New Zealand prisoner who has passed out of the probation grade and has served three months of his sentence may earn wages. The basis for this wage is twofold; a part of it depends upon the industry and good conduct of the prisoner, and a part of it upon the family dependents he has to support.³³ A system of marks is used to determine the graduation of these payments. Skilled labor, able-bodied male prisoners with proved dependents, and under certain

³² Lewis, *op. cit.*, p. 333

³³ Hobhouse and Brockway, *English Prisons Today* (London, 1922), pp. 117, 118

conditions female prisoners having dependents are provided extra pay. Ninepence a day is allowed to unskilled prisoners and $11\frac{1}{4}$ d. to the skilled. The extra pay for those having dependents varies from 3s. to 6s. 9d. per day. All of the money paid the man for good conduct and industry is given him upon his discharge. Moreover, a deduction is made for the cost of maintenance and supervision.

In France payment of wages to prisoners is provided only for those serving sentences of more than twelve months. In that country prison labor is let out to contractors at a lower rate than is prevalent among free laborers. A part of the prisoner's earnings may be spent for himself, the rest is given him on his discharge.³⁴

In Ceylon there is provided a small wage for first offenders and for the special class of reconvicted prisoners. The wage is on a sliding scale based upon the wages won for good conduct and industry.³⁵

In the Bilibid Prison and at the Iwahig Colony in the Philippines a wage is paid to certain prisoners. At Bilibid it is paid to those who have reached the grade of skilled laborer, usually at the end of six months. At Iwahig the colonists after a few months are dependent on their own efforts for a living. Half of the net value of their products goes to their credit.³⁶

In Mexico the law provides that a portion of the fines collected from criminals shall be devoted to paying the prisoner for his work. The great bulk of the Mexican prisoners in the Federal and State prisons as I saw them in December, 1932, had no regular work in prison industries and rely for any income on making small articles for sale.

Russia has the most remarkable plan for the payment of prisoners I have found anywhere. The prisons in Russia are an integral part of her industrial system. Each is given a quota to produce each year just as is any other factory or state farm. The prisoner is paid regular trade-union wages in the industrial correctional colonies³⁷

The Extent of Wage Payment in the United States. A study published in 1931 showed some thirty States in the United States making provision for compensation. A few others provide for pay only for an "overshtint."³⁸ On the whole, it must be said that the present provisions for the

³⁴ Hobhouse and Brockway, *English Prisons Today*, p. 121.

³⁵ Gillin, *Taming the Criminal* (New York, 1931), p. 81.

³⁶ *Ibid.*, p. 59.

³⁷ Gillin, "The Prison System of Modern Russia," in Davis, *The New Russia* (New York, 1933), Chap. 12, "Russia's Criminal Court and Penal System," *Journal of Criminal Law and Criminology*, May-June, 1933, pp. 290-312.

³⁸ *Report on Penal Institutions, Probation and Parole*, National Commission on Law Observance and Enforcement (Washington, 1931), p. 268.

payment of wages to prisoners are inadequate from the standpoint of the support of a family.³⁹

ARGUMENTS FOR AND AGAINST WAGE PAYMENT TO PRISONERS

Arguments Against. What shall be paid with reference to this proposal to pay wages to prisoners, both from the theoretical and from the practical point of view?

1. It is argued that *criminals are a heavy burden to the State*. From the moment that they commit the crime until they are discharged from the prison they cost the taxpayers an enormous sum. Since the criminal is a menace to society, it is held, he ought to pay the State for these costs. What justification, it is asked, is there for the State's paying, in addition to these heavy charges, a wage to the prisoner? Would not this be simply to pay a premium for crime?

2. Closely allied to this argument is this, that *the penal institutions are not self-supporting*. Even the State farm in Massachusetts where, if anywhere, economic independence should be possible, shows a loss of \$2.50 per week on each inmate. Therefore, say the opponents, it is impossible for the State to pay a wage to the prisoner without a burden upon the taxpayers additional to those already incurred in the prisoner's arrest, trial, and care in the prison. In most States the penal institutions are not self-supporting.⁴⁰

3. The proposal is *opposed also on the ground of constitutionality*. In both Kentucky and Texas laws providing for the payment of a wage to prisoners were declared unconstitutional. In Kentucky the finding of unconstitutionality was due to a technicality. The court made no finding on the merits of a wage for prisoners. In Texas, however, the argument was based upon other constitutional grounds. While the adverse opinion in Texas was delivered by the Attorney-General rather than by the Supreme Court, it illustrates the constitutional argument against payment of wages. In general, his argument was that since the people of Texas had invested millions of dollars in the prison system and its support, every citizen of the State had an equal interest in this property, therefore the proposal of the legislature to pay a part of it to the prisoners and their dependents is unconstitutional because the Texas constitution says that public moneys shall not be paid to private individuals except for public services. But the services of the prisoner are required to be delivered to the State as a part of the execution

³⁹ Weyand, "A Study of Wage Payment to Prisoners," *Journal of Criminal Law and Criminology*, X, 591 (February, 1920).

⁴⁰ Weyand, "Study of Wage Payment of Prisoners as a Penal Method," *Journal of Criminal Law and Criminology*, XI, 255, 257 (August, 1920).

of his sentence. Again, the proposal to take part of the proceeds of the prison system and pay it to the prisoner and his dependents violates that section of the constitution providing for the payment of interest and creating a sinking fund out of the proceeds of the prison system.⁴¹

4. Furthermore, the opponents of the plan to pay wages to prisoners contend that *money in the hands of the prisoner is the worst possible thing he could have*. Aschaffenburg, the German criminologist, says that under no condition should the prisoner receive money. Some of the prison officials argue against it on the same ground. Thus the State agent of the Minnesota State Prison says that he is convinced that a larger number have been injured by the good-conduct wages paid by that State to prisoners than have received substantial benefit. They will not look for or accept work as long as they have any money left. They will squander the money to their own undoing and therefore the State's money is wasted.⁴²

Arguments For. 1. It is held that *the criminal law provides for the deprivation of the convict's liberty only*; it does not involve the right to deprive a prisoner of his earnings above the cost of maintenance. Therefore, it is argued that the prisoner is entitled to an equitable proportion of his earnings to satisfy the demands of justice. If the state withholds what the convict earns above his maintenance, then the State is setting him a thief's example by stealing his wages.

2. In answer to the contention of the opponents of wage payment, it is pointed out that *some of our prisons are more than self-supporting, and under proper management all could be made so*. The Kentucky Penitentiary in 1911 reported a cash profit of over \$30,000 besides improvements made at the institution amounting to over \$40,000. The Maryland State Penitentiary in 1912 showed earnings by the prisoners of over \$141,000 for the institution, besides nearly \$33,000 for themselves by overtime. The same institution between 1905 and 1910 paid into the State Treasury the sum of \$45,000. The Maine State Prison in 1911 showed an average individual profit over subsistence and clothing of more than \$52 and in 1912 of more than \$42. The Kansas State Prison saved the State about half a million dollars during the year ending June 30, 1913. In Minnesota for the two years ending August 1, 1914, the profits of the twine plant and the manufacturing plant were over \$300,000 a year.⁴³

3. *Payment of a wage to prisoners is an effective means of rehabilitating them.* The practice increases the interest of the prisoner in his work, gives

⁴¹ Weyand, *loc. cit.*, XI, 96, 106 (May, 1920).

⁴² Cited in Weyand, *loc. cit.*, XI, 258 (August, 1920).

⁴³ Weyand, *ibid.*, pp. 243-245

a purpose to his labor, makes him feel that his punishment is a measure of justice rather than of cruelty, sends him out of the institution without a grudge against society, makes him feel that his family is not forgotten by society, keeps the ties between him and his home intact, and provides him with enough money to keep him until he can find employment, thus reducing the likelihood of a relapse into crime in order that he may live.

4. *The practice makes for easier discipline in the prison.* It is the testimony of some prison officials and board members that the payment of a small wage entirely changes the attitude of the men and makes prison discipline very much easier. Says Mr. Eaman, of Michigan, "It has been our experience in Michigan that the compensation of prisoners has not only made for better prison discipline but has tended toward reformation and has enabled men to feel more like men. And it is our hope and aim there to increase our compensation from about 15 cents a day to 25 cents a day."⁴⁴

5. *Payment of a wage to prisoners increases the industrial efficiency of a prison.* All the testimony of prison officials points in this direction. I know of no dissenting voice. It appeals to a man's own self-interest and the interest he may have in his dependents and makes work worth while. From this point alone the payment of a wage might well be justified.

6. It is better that the dependents of a man should receive as much as possible of their support while he is in prison from his own earnings than from public poor relief, or even mother's pensions. The latter may be necessary to supplement what is lacking in the amount he can send, but it is important that the consciousness that they are being supported by their natural and legal supporter should be kept alive. Moreover, in many States the support of prisoners' families constitutes a heavy burden upon the charities. Frequently the fact that the family must be supported by charity makes the wife lenient toward the offender and induces her to ask for his release or parole as soon as possible. Again, the habit of receiving public or private charitable relief pauperizes the family, whereas if it were supported in part by his earnings, that danger would be lessened.⁴⁵

7. *The fact that a man is not deprived entirely of the consciousness that he is supporting himself is beneficial.* In the outside world he must depend upon his own wages for his support. Why, when we take him into the institution for his reformation, should we deprive him of the operation of economic motives which are of the greatest importance to him when he is released? It gives him a purpose while in prison, it provides a stimulus both economically and socially. Furthermore, it makes him feel that the

⁴⁴ *Journal of Criminal Law and Criminology*, VI, 519, 520 (November, 1915)

⁴⁵ Weyand, *loc. cit.*, XI, 252, 253 (August, 1920).

punishment he is getting is more just than if he is deprived of his labor as well as his liberty.

8. *The payment of a wage to prisoners also enables them to make restitution to those who have suffered from their crime.* Some of our States have such laws. From the standpoint of the prisoner's psychology in the development of a sense of social responsibility, the requirement of restitution is of primary importance. Without earnings, however, how can he do it unless he is a man of independent property?

9. In England a recent study showed that at least one labor leader thought that *a wage payment to prisoners would obviate the objections often taken to prison labor on the ground that it is not fair to free labor.* He made the point that if the wage paid to the prisoner was based upon standard wages for the same kind of work outside, deduction being made for a reasonable charge for maintenance of the prisoner, the reason for the restrictions now urged by labor-unionists would disappear.⁴⁶

The Place of a Wage to Prisoners in Prison Industry. The most thorough study which has been made of this subject in recent years in a particular State is that by the Prison Survey Committee in New York State. This study discussed the scheme of a wage payment in its relation not only to the problem of discipline but also to its proper place in the scheme of prison industry. Because of the broad view of the matter taken in this report, the recommendations are worthy of particular attention.⁴⁷

The committee recommended that *a wage should be paid not only to those engaged in productive industries but also to those engaged in maintenance.*

"The committee has recommended the payment of a wage to all prisoners who are mentally and physically capable of working. It would be obviously unfair to restrict a wage to those who are engaged in industry and keep it from those who are assigned to maintenance and upkeep."⁴⁸

However, the careful study made by this committee showed that as then organized the industries in the prisons of New York State would be unable to pay a wage out of the earnings above cost of maintenance. It estimated that in the prisons of New York State if the entire net proceeds were distributed to all the 3,800 prisoners in Sing Sing, Auburn, Clinton, and Great Meadow, including those who are not mentally and physically fit, but not including the 1,500 patients in the two hospitals for the criminal insane, 20¢

⁴⁶ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 118

⁴⁷ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), p. 119.

⁴⁸ *Ibid.*, p. 98.

per working day might be paid each one. In other words, it was costing the State an average of 89¢ a day to administer, guard, care for, and feed a prisoner. This was the situation with all in the same institution, the fit and the unfit for industry. If a wage were to be paid to the prisoners, it would be necessary to take out of the institution the feeble-minded prisoners, because if they were to remain there, and the prisoners who were working were to be charged with their maintenance, even if 20¢ a day were allowed as a wage to the prisoner, at the end of the day he would find himself 69¢ in debt to the State. Therefore, under these conditions it was impossible to pay a wage above the cost of maintenance out of the proceeds of the prison industry to prisoners. However, if the prisons are run on a basis which segregates the industrially unfit from the industrially capable, as is only just to the latter, then if the prison industries are even fairly well managed a wage for the working prisoners is possible. The others ought to be used as best they can according to their capacities, but it is not fair to force the good workers to support the physically and mentally incompetent.

Since in free industry wages are paid on the basis of piece work or of day's work and since the free industries have certain prevailing rates, the committee recommended that such rates be used as the basis for approximating the wages of the inmates engaged in similar occupations. For the maintenance occupations another basis must be found. However, since the prison maintains the convict, the wage must of course be less and from the total income must be deducted charges for maintenance before the wage is computed. The committee recommended that if the prisoner had dependents a certain portion of his earnings should be sent to them. If he had none, the money should be placed to his credit to be paid him on discharge.

It further recommended that if the prisoner were idle, not by his own fault but by reason of the failure of delivery of raw materials or breakdown of machinery or failure of the sales agent to secure sufficient orders, he should be credited with \$1.35 per day or such other sum as was charged against the working inmates for maintenance.

It further recommended that in considering an application for parole, the authorities should take into account the wage paid the prisoner as an index of his conduct in industry and also as a promise of his being independent during the time between his discharge and the time when he should obtain a job.⁴⁹

CONCLUSION

On the whole, therefore, must we not conclude that prisons should be so managed that a wage may be paid to all those who are capable of work?

⁴⁹ *Ibid.*, Chap. 9

The possibility of paying the wage is a question of the management of the institution. Unless it is conducted like any other great industry, it will be impossible to pay a wage without an additional burden upon the taxpayers. However, since it is desirable that the prisoner should have operating upon him the motives for good which play upon him in the outside world, is it not desirable that the incentive to good conduct, to self-support, to the support of his family, or to the accumulation of a fund to enable him to keep crime from his door upon discharge should be put into operation? ⁵⁰

QUESTIONS AND EXERCISES

1. What are some of the principles of prison labor which have been settled by experience?
2. What are some of the principles which have been partially settled?
3. Discuss the reasons for the economic inefficiency of prison labor.
4. What are the chief benefits of prison labor outside the walls?
5. What are the dangers of prison labor outside the walls?
6. State the social reasons for the payment of wages to prisoners.
7. Trace the history of the movement for the payment of a wage to prisoners (a) in the United States, (b) in England, (c) in other countries
8. How widespread is the movement for a wage for prisoners among the State institutions in the United States?
9. State the arguments against payment of a wage to prisoners; the arguments for the payment of a wage

⁵⁰ In a recent communication a former inmate of the Wisconsin State Prison says on this point

"My observation is that the *greatest regenerative influence is well compensated work*. You will find that the most cheerful and best behaved inmates are those who have been able to secure a position within the institution where they can receive the greatest possible pay. Most of the men have just two things in mind. One is to secure as speedy a release as possible, and the other is to help and support their families or at least maintain connection with them. These things require money, and unless the men are permitted to earn money they are rendered absolutely helpless. This brings about the bitter and morbid states of mind that are so prevalent. To my mind, the first step in reforming the present system is to provide the men with good pay, deducting the actual cost of their maintenance. If the men were well paid a great deal of the expense occasioned by costly structures of stone and steel and by superfluous guards would be eliminated."

He adds

"Upon going back over what I have written I find one point that cannot be played up too strongly. That is regarding the compensation of inmates. Every reformative measure will fail unless that factor, which seems solely economic, is considered. Increased pay will increase the productivity of the institutions and decrease administration costs. You might note what has been done in California and Minnesota along this line."

CHAPTER XXII

PRISON ADMINISTRATION: MANAGEMENT AND DISCIPLINE

THREE Objectives of Prisons. There are three objects which the prison must secure: *First*, the prison must be made as nearly self-supporting as possible. Let us call this function Management. Prison management is thus concerned with the economic aspects of the prison life. The men are usually sentenced to the institution at hard labor. Very early in the history of American prisons the endeavor was made to make the institutions self-supporting.

The *second* object of the prison system is reformation of the prisoners so that they may return to society as useful members instead of a social menace. This function of the prison administration we call Discipline. In actual practice, of course, management and discipline must go hand in hand and each serves both purposes. For example, unless the economic management of the prison takes into account somewhat the reformatory purpose, the prison may become self-supporting and yet defeat the ultimate purpose of reformation. On the other hand, discipline reacts upon the economic productivity of the inmates.

The *third* purpose of the prison is to protect society from the ravages of those who have in free life menaced their fellows. The prison must make every effort to keep the inmates within its walls. Both management and discipline are directed to this purpose.

Importance of Administration. In the prison you have a small community closely guarded from contact with free society. Its members are denied liberty, shut away from friends, relatives, and all the usual associations of family and free community life. They are all of one sex in each institution and, for the most part, very much of the same age. There is no home life, and very few of the motives which play upon the man in free society operate upon them.

Moreover, it is a peculiar community. The members of it are there against their wills, desirous of getting out as soon as possible. They are stamped by judicial action with a social stigma. They comprise a great variety. hardened criminals and chance delinquents, normals and those with

personalities warped intellectually, emotionally, and habitually. All of them have broken some law intended for the protection of society. They are supposed to be self-supporting, yet in most prisons they are deprived of the usual economic motives. Instead of working in order that they may be fed, clothed, and housed, they work for fear that they may lose privileges or be punished.

Furthermore, one of the purposes for which they are there is to be trained for social life, yet often they must be silent, must observe many rules which seem intended to make life as much unlike that outside the prison as possible. They get none of the social intercourse common to those on the outside. Thus in the prison community you have the queerest combination of diverse personalities, without the social and economic motives usually depended upon to move men for the better in free society, and yet it is the task of the warden to guard, feed, clothe, house, warm, keep at work, treat when sick, discipline when unruly, and so deal with these men that the institution will be as small a burden as possible to the taxpayers and yet turn men back into society better fitted to live there than they were before. Such a task might well appall a saint and sage rolled into one.

THE ADMINISTRATORS

Who are the men who administer this prison system? As the institution has grown up in the United States we have *a board* of men under one name or another which has the responsibility for the management of the institution through the warden, in immediate charge of the prison, who is sometimes called the principal keeper; the deputy warden; sometimes stewards; guards, who are in direct charge of the men; and such lesser officials as are concerned with the maintenance and with the production activities of the prison.

Record Assistants. Let us begin with the man as he enters the prison. Brought in by a sheriff or deputy, he is taken at once to the records office where the commitment papers are handed over. After proper record is made of these papers, he is usually taken to the Bertillon room, where a series of measurements are taken, photographs made, his finger-prints taken, and a record placed upon an identification card. Thence, after a change of clothing and a delivery of all his possessions—of which a list is made—he is clothed with prison clothing, assigned a cell, and—usually after a period in quarantine—is sent to another official, who puts him to work. Designated to a particular shop, he is taken thence by a guard who delivers him to the guard in charge of the shop and the foreman in charge of the industry.

The steward looks after the feeding, clothing, and other creature com-

forts of the prisoners. Each shop has its foreman, who is responsible for the industrial activities which there occur.

The Guards. Immediately over the men, as representatives of the prison administration, are the guards. The business of these men is to see that no prisoner escapes, to keep order, and to make reports of industrial inefficiency or of breach of discipline. Usually they are appealed to by the industrial foremen only in case of disorder or refusal to work. For the most part they are men who are paid a rather small salary, have usually entered the service of the prison young, need not have very much education, have made no study of the psychology of the prisoners or the technique of prison discipline, and have learned the job from observation, from what they can pick up from older men, and from the instruction of the warden and the deputy. They march with the prisoners from the cell house to the shops, back with them to the dining-room, back to the cell house, number the prisoners three times a day, and are in most constant contact with the inmates. They are not, however, supposed to converse with the inmates on any but official matters, and then in the briefest possible terms. There is no association between the guards and the prisoners on a common level. They have almost absolute authority over the prisoners and have the responsibility of reporting all their breaches of discipline. Naturally this unusual authority breeds contempt and suspicion and creates a wide gulf between prisoner and guard.

The Warden and His Deputy. The deputy warden usually is in charge of the discipline and has under his immediate authority the guards. To him the reports of breaches of discipline are made, and he sees the men sent in for discipline, and pronounces sentence upon them with no appeal, except in rare cases to the warden. Thus he is practically an absolute despot in his field. It is under his stern hand that every man's life is ordered. His word may mean progress from one classification to another, or demotion to the lowest grade with the loss of good time, the deprivation of privileges, and punishment of whatever nature he may think necessary.

The warden, who is the general officer in charge of the prison, often is the business manager of the prison and has his time taken up quite largely with the general economic management. He makes contacts with the administrative board and with the general public. He is the ultimate court of appeals in cases of discipline and management. It is he who checks up the productive records and seeks so to coordinate management and discipline that the various purposes of the prison may be carried out.

The Administrative Board. In charge of the prison is a board called by various names. Originally the board was called a board of inspectors.

It was the business of these inspectors in early times to visit the prison in order to see how the warden or principal keeper was conducting it.

Out of this original board of inspectors for each prison in some of our States have grown the *boards of managers or trustees* for each of the prisons. For example, in Indiana the prison has a board of trustees, unpaid, who have charge of the general policies of the prison, present the budget to the legislature, and spend the money which the legislature appropriates. Gradually there grew up a *State board of supervision* of the various State institutions, the first of which was the State Board of Charities in Massachusetts, which came into existence in 1863. This board merely supervised the various institutions, made reports to the legislature, and consulted with and advised the warden and the board of managers of the prison; it had no administrative authority.

Very much later there developed the *board of control*. This is an administrative board which has direct charge of the various State institutions, including the prison or prisons. This plan did away with the board of managers or trustees of each institution, and therefore under this system the prison is managed immediately by the board of control.

In still other States, as the number of State institutions increased, the various State penal and correctional institutions were separated from the charitable institutions and were placed under a *board of prisons*. This occurred in New York and Massachusetts, for example. This is only a modification of the State Board of Charities plan.

Recently there has grown up what are called *departments of public welfare*, which have charge of all of the charitable and correctional institutions in some States and in others have charge of the charitable institutions, while the prisons remain under a separate board. Illinois was the first State to have a department of public welfare as one of the nine departments of State government, the head of which is a member of the Governor's cabinet and which administers the charitable and correctional institutions of the State. These general boards determine the policies and appoint the chief officials in immediate charge of the prison.

MANAGEMENT

If the purpose of management is to make the prison economically productive, what are the ideals of management which the history of prisons in the United States reveals?

Early Ideals in the United States. While management is concerned primarily with economic production, at first it was not a distinct object.

It was considered an adjunct to discipline. This is shown by the "penitentiary houses" established near London as the result of John Howard's labors. Says a recent writer:

"John Howard's untiring investigations in England and on the continent brought relatively quick results. In 1779, the English parliament passed an act establishing 'penitentiary houses' near London, the objects of which were.

"To seclude the criminals from their former associates; to separate those of whom hopes might be entertained from those who were desperate, to teach them useful trades, to accustom them to habits of industry, to give them religious instruction, and to provide them with a recommendation to the world, and the means of obtaining an honest livelihood after the expiration of the term of their punishment'"¹

This conception of management and discipline also appears in the purposes of the first attempt in Pennsylvania to establish a prison along the lines of these British establishments.² However, early in the history of the Pennsylvania system economic considerations were invoked. Also it soon became apparent at Auburn that the prison could be made to pay.³ In fact, it was at that prison that the demonstration was first made that a prison could be conducted on a self-supporting basis. Elam Lynds early envisaged such a result. In 1840 Mr. Wiltse, warden of Mount Pleasant, or Sing Sing, reported that in the previous two years the prison had made \$111,773 over all expenses.⁴ How did Lynds propose to secure this result? Let the answer be given by a recent historian of labor in that prison:

"If, then, there were no inducements in the form of privileges at Auburn prison that might be earned by the prisoners for work performed, there must obviously be some compelling force to secure such an output of product. *This force was the constantly impending punishment, and its frequent application.* It was frankly conceded by the administration that the system could not be maintained without prompt, severe and effective punishment."⁵

Lynds maintained that uninterrupted silence and uninterrupted labor were the fundamentals of his system. He confessed that it would be impossible to produce the results Auburn showed without the use of the whip.⁶

¹ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, 1922), p. 34.

² *Ibid.*, p. 34.

³ *Ibid.*, p. 80.

⁴ *Ibid.*, p. 140.

⁵ *Ibid.*, p. 92.

⁶ de Beaumont and de Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp. 199, 201.

Introduction of Better Methods of Management. These experiments soon proved that both economic self-support and reformation were twin ideals which must be kept in mind. As a result, less inhuman methods of enforcing productive labor and of promoting good conduct in the prison were tried. These were based upon a clearer understanding of the motives which move men to industrial activity and to good conduct. Experience showed that in the last analysis brutality could not be relied upon to promote economic activity. Moreover, society was not insensible to the cruelty of such methods.

The experience of the last 100 years has shown clearly that in the successful management of the prison *attention must be given to a classification of the prisoners on the basis of economic ability.* Recent studies have shown that only a part of the prisoners have the capacity to be productive. The New York Prison Survey Committee proposed in 1920 that Sing Sing should be turned into a reception prison where the prisoner should be studied and classified according to his capabilities and only those prisoners used in the prison industries which this study had shown to have native capacity and training enabling them to be good workmen.⁷

Furthermore, that study contended that unless the whole process of economic production, selling as well as producing, was integrated, prison labor could not be productive. The New York Prison Survey Committee therefore recommended in 1920 that there should be organized in the prison system an agency to dispose of the products of the prisoners to the State, city, and county institutions in the State of New York.

Relation of Management to Discipline. It is still true that the legislatures, and back of them the taxpayers, desire to see the prisons economically self-supporting. It has become clear, however, that a well-managed prison, which takes into account the economic psychology of the prisoner, will greatly simplify the problems of discipline and that good management also promotes good order and the preparation of the inmate for an honorable career when he is discharged. If the prisoner feels that he is being treated fairly in the labor required of him, he will be less likely to be unruly. If he feels that he is useful to society, to his family, and to himself, he will be more contented and more industrious.

Moreover, we must not forget that the chief purpose of prison management is also the primary object of prison discipline, viz.: the social rehabilita-

⁷ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), Chap. 7, Salmon, "The Prisoner Himself," in *The Prison and the Prisoner, A Symposium*, edited by Jaffrey (Boston, 1917), Chap. 7

tion of the prisoner in order to prepare him for a free life in society. Said the New York Prison Survey Committee:

"There is something deeper within the soul of man than a surface layer of creature comforts, of wage incentives, of bi-weekly movies, and classrooms and books. We must not assume that these things alone will be sufficient to regenerate the prisoner. The routine of prison life is to-day uniform, repressive, and mechanical rather than vitalizing. The creative impulse which lies dormant in the prisoner must make its start largely through the expansion of the field for self-expression."⁸

DISCIPLINE

Jeremy Bentham labored under a psychology of punishment which made him stand for methods of discipline which to-day seem barbarous. In his *A View of the Hard-Labour Bill*, he cited with approval the following provisions in the bill for the punishment of refractory prisoners:

- "1. Moderate whipping.
- "2. Confinement upon bread and water in a dungeon, for any time not exceeding ten days.
- "3. Or, both the above punishments in conjunction."⁹

Even the Pennsylvania Quakers, who established the Pennsylvania or "separate" system of prisons and who tried to modify the harsh treatment of prisoners, put into operation the cruel separate confinement. However, with all its cruelty it was probably the most humane of the time; certainly so as compared with that of Elam Lynds at Auburn and Sing Sing. Yet Dickens condemned it as most inhuman, and de Beaumont and de Tocqueville described it as severe.

In early days, in neither the Auburn nor the Pennsylvania prisons were there provisions for "good time" off for industry or good conduct. There was no wage to stimulate the prisoners to activity. There was very little provision for communication with friends or relatives. While in Pennsylvania the punishments were chiefly the deprivation of exercise-yard privileges, in Auburn the punishments consisted of the whip, deprivation of food, and solitary confinement.

When de Beaumont and de Tocqueville visited the prisons of the United States they found that.

⁸ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), p. 147.

⁹ Bentham, *Works* (Edinburgh, 1843), IV, 26

"Application to labour and good conduct in prison do not procure the prisoner any alleviation. Experience shows that the criminal who, whilst in society, has committed the most expert and audacious crimes, is often the least refractory in prison. He is more docile than the others, because he is more intelligent; and he knows how to submit to necessity when he finds himself without power to revolt. Generally he is more skilful and more active, particularly if an enjoyment, at no great distance, awaits him as the reward of his efforts; so that if we accord to the prisoners privileges resulting from their conduct in the prison, we run the risk of alleviating the rigours of imprisonment to that criminal who most deserves them, and of depriving of all favours those who merit them most."¹⁰

Nothing could better set forth the concept then prevalent in the United States of the way to get improvement in the prisoner: he must be made to suffer.

The lack of rewards in the American prisons of the time struck the attention of even such sympathetic observers as de Beaumont and de Tocqueville. Reflecting on the lack of rewards in the American prisons for good conduct, they remark:

"Perhaps it would be impossible, in the actual state of our prisons (in France) to manage them without the assistance of rewards granted for the zeal, activity and talent of the prisoners. But in America, where prison discipline operates supported by the fear of chastisement, a moral influence can be dispensed with in respect to their management"¹¹

Yet, experience in our country has shown that even here for the sake of prison order we had to come to rewards.¹²

However, suggestions had been made for an appeal to other motives than fear by early prison reformers. Thus the bill discussed by Bentham in his *A View of the Hard-Labour Bill* provided for "good time" off for prisoners and for a recommendation for clemency to the king for those sentenced for life.¹³

The governor of Kentucky in 1821, among other recommendations, urged that rewards should be offered that would bring to the worthy prisoners both exemptions and distinctions and that would also shorten the time of confinement and service. He wisely suggested that on departure the inmate should receive a part of his earnings.¹⁴

An English visitor to the United States in 1827-28, Captain Basil Hall

¹⁰ de Beaumont and de Tocqueville, *op. cit.*, pp. 33, 34.

¹¹ *Ibid.*, p. 34

¹² *Ibid.*, p. 47

¹³ Bentham, *op. cit.*, IV, 26.

¹⁴ Lewis, *op. cit.*, p. 257

of the Royal Navy, made some suggestions which later have found realization. He said:

"Why, if disobedience be punished, should not obedience be rewarded? And how easy it would be to give the convicts a direct and immediate interest in conforming to the rules of the place! Suppose a prisoner were sentenced to several years' confinement; then, if he behave well for a week together, let one day be struck off his term of confinement; then, if he continues to deport himself correctly for a month, let his term of detention be shortened a fortnight; and if he shall go steadily on for six months, then let half a year be struck off his whole period; and so on, according to any ratio that may be found suitable. . . . It must surely be the wish of society in general to let a prisoner out as soon as possible, consistently with a certain salutary effect on himself and on others. It has always seemed to me that by the process of giving the convict a constant, personal interest in behaving well during his confinement, not only might the seeds of virtue be sown, but the ground put in good order for their future growth . . . If the plan I suggest were adopted, the evils of uncertainty [of sentence] which are great would fall entirely to the prisoners' share, not that of the public, from being made contingent upon their own conduct. . . . Of course, the pardoning power would need to be tied up more strictly than it is, and imperatively limited by law."¹⁵

Warden Charles Robinson of the Massachusetts State Prison in 1843 found that discipline to be effective need not be brutal. He made many notable experiments already referred to, such as music, libraries, "good time" off, and a prison society for improvement and self-government.

Said Gray in 1847, referring to the self-government association in the Massachusetts prison:

"All such intercourse among them as does not tend to corrupt them, to produce disorder, or to interrupt their labor—if in the presence of an officer—is humanizing and beneficial. If people say this is not the Auburn system, then let us call it the 'John Howard system.' We've come back to him."

Says Dr. Lewis concerning this experiment:

"In truth, this society, more than any other phenomenon of the Massachusetts prison, proclaimed the fact that the Auburn system did not compass all wisdom in prison discipline. Whether the society ultimately failed or succeeded, the first great step had been thus taken in Massachusetts toward establishing inmate interest and inmate participation in the principles and the methods of administration of the institution. And, with a prophetic voice, Gray designated the prison as an 'asylum and moral hospital for guilt,' which, he said, some of the benevolent believed that it should be"¹⁶

¹⁵ Quoted in Lewis, *op. cit.*, p. 116.

¹⁶ Lewis, *op. cit.*, p. 170.

Thus suggestions of better methods of discipline were being made by thoughtful men. In most cases, however, the age was not ripe for these proposals.

Development of Methods of Discipline. From the first of the history of our prisons men were struggling with the purpose of discipline. Various experiments have been tried from that day to this. Many of these experiments have been condemned by results. Some continue in the absence of better methods, some by reason of the conservatism of the prison officials and by reason of the indifference and ignorance of the public. The first of these tried was *classification*. We have already seen in a previous chapter that the old Walnut Street Prison created problems which challenged the efforts of the Philadelphia Quakers. They proposed that certain changes should be made whereby the inmates would be classified.

Classification. What were the early results of the changes made in the Walnut Street Prison in Philadelphia? The law authorizing the changes in the prison, which provided eighteen cells for the solitary confinement of the most hardened cases and associated labor for the less hardened, was passed in 1790. If after five years this experiment proved to be a failure, it was to be discontinued. So remarkable were the results believed to be that by 1794 the legislature reduced the crimes punished by capital punishment to premeditated murder alone. The praises of the new system were proclaimed not only by the advocates of the system but by European visitors, and its fame caused it to be copied by other States of the Union and by several European States.¹⁷

In connection with this apparent success it must not be forgotten that the early success of this experiment was probably due not only to the clear statement to the prisoners that their treatment would depend on their conduct and that only those who conducted themselves properly would be recommended for pardon, but also to the immediate and personal interest taken in the individual prisoners by these leading Quakers, who as members of the board of managers "had solicitude for many things in the convicts' life. Moral and religious instruction was to be provided through the Bible and other religious books. Divine service was to be held weekly."¹⁸ In short, the success was such by contrast with what had gone before and was real by reason of the lack of contamination provided by the segregation of the worst offenders from the others, because the less hardened were given useful employment, and by reason of the individual attention of high-minded

¹⁷ Lewis, *op. cit.*, p 29

¹⁸ *Ibid.*, p 28

persons interested in the reformation of the offender, who had given hostages to fortune in backing this experiment.

A similar attempt was made in New York. In 1815 Mr. Eddy, warden of Newgate Prison in New York, recommended a classification of the prisoners as an incentive to industry, good order, and reformation. He suggested three or four classes, progress to be made from the lowest to the highest on the basis of industry and behavior. He suggested that no pardons should be granted from any but the first class, except in special circumstances. He also urged that to those convicts who had met the approbation of the managers during their confinement be given a certificate of "liberation on merit" on their discharge. These suggestions anticipated by more than half a century the classification of inmates and parole introduced into the Elmira Reformatory.¹⁹

Another important development in classification occurred when the *houses of refuge for juveniles* were established. That in Philadelphia was set up in 1828, at first as a private institution. Here the classification was on the basis of age, degree of criminality, and susceptibility to reformation. Similar institutions were erected in New York and Massachusetts soon after.²⁰ A further attempt at classification came with the erection of State *hospitals for the insane*, with provisions for insane criminals. Most of these arose out of the efforts of Dorothea Dix. The movement for the creation of special hospitals for the criminal insane came very much later, at the end of the nineteenth and beginning of the twentieth century. Further classification among delinquents appeared when *separate institutions were provided for boys and girls*.

As the recognition of *feeble-mindedness* became more general, attempts were made to provide separate institutions for feeble-minded offenders. This made available a place for the treatment of those delinquents who otherwise would have been confined in State prisons or county jails. As yet, however, only a very small number of the mentally defective delinquents are permitted by law to be cared for in such institutions.

The so-called *Irish System* was an attempt at classification and specialized treatment of the delinquent. While this system was a fore-runner of the reformatory, one of its methods was to classify the criminals *according to grades*. In the earlier English System there were three grades, composed of solitary imprisonment for the first period, labor in association during the second, and then transportation. Upon the abolition of transportation, re-

¹⁹ Lewis, *op. cit.*, pp. 59, 60

²⁰ *Journal of Prison Discipline and Philanthropy*, New Series, No. 58 (Philadelphia, 1919), p. 24; Lewis, *op. cit.*, Chap. 24

lease followed labor in association, on what was known as "ticket-of-leave." Crofton introduced a fourth stage with some subdivisions of the second. The second stage was called "progressive classification," which was divided into five classes. After the period of solitary confinement, the prisoner was transferred into one of these five classes of the progressive classification grade. Most of the prisoners were transferred to the third of these sub-groups and then passed on through the fourth and the fifth, when under the English System he would have been entitled to "ticket-of-leave." Crofton, however, went further in his fourth grade, called *the intermediate prison*, where the prisoners slept in movable iron shacks and were engaged with comparative freedom in farming and manufacturing. The purpose of this stage was to ascertain whether the prisoner had gained sufficient self-control to be set at liberty under the ticket-of-leave.²¹

It was long after this grading system was introduced into English prisons and the Irish prison system that it was worked out as thoroughly in American prisons. For some time, however, we have had three grades or classes of prisoners in our penitentiaries.

Recent thought has gone much further in proposals to classify prisoners. With the growth of knowledge as to the causation of crime, it has become apparent that neither age nor good conduct in prison nor the legal gravity of the crime is a sound basis for classification. It has been discovered that criminals fall into classes which are not recognized in our penal codes. Many of them suffer from physical handicaps. They differ in mentality and emotional reactions, and therefore in self-control, in health, and in vocational skill. It has been suggested, therefore, that *a sound system of classification must recognize these physical, mental, and educational differences among prisoners*. Hence, the New York Prison Survey Committee in 1920 recommended a more fundamental classification of the prisoners. Accepting the earlier classification, which took out of the prisons the insane, children, and women, this committee proposed that Sing Sing should be turned into a new receiving institution where all prisoners would be carefully studied and classified according to their *physical condition, mental characteristics, education, and vocational advancement*. This receiving station would be a central clearing-house for the classification process. Here also those who were in need of medical or surgical treatment were to be kept long enough to put them on the road to recovery. In this receiving station an experimental industrial training plant would test prisoners for their industrial capacity

²¹ Wines, *Punishment and Reformation*, Revised Edition (New York, 1919), pp. 196-197, Carpenter, *Reformatory Prison Discipline, as Developed by the Right Honorable Sir Walter Crofton in the Irish Convict Prisons* (London, 1872), Chap. 2.

and here would be sifted out those who were mentally defective, insane, or so mentally abnormal that they required a special institution. The committee suggested that *six classes* be recognized:

(1) Normal or nearly normal prisoners who should be assigned to that prison where they may receive the greatest benefit from the work, training, education, and general activities of the prison.

(2) Those with remediable diseases, both mental and physical. These should be retained at the receiving station pending recovery and rehabilitation.

(3) The insane, who should be sent to Dannemora or Matteawan hospitals for the criminal insane.

(4) Mental defectives of the type requiring institutional care. A special institution for these mentally defective criminals should be provided.

(5) Certain constitutional psychopaths, especially those with sex abnormalities, should be retained in a special department for study and for special methods and management while plans were formulated for permanent provisions for them.

(6) Those with incurable physical diseases. These should be kept at the receiving station at Sing Sing where they might enjoy the benefits of the fully equipped hospital facilities for their relief. This suggestion was also made so that the prisons might be relieved of the burden of their care.

This Survey Committee also recommended that the reformatories for men and women should be combined under the board that manages the prisons and that the reformatory inmates should be handled on the same basis of classification, rather than those hitherto determining the place to which they should be sent, viz.: age, gravity of the crime, and frequency of offense.²² A number of these suggestions have since been carried out in New York.

The Prison Commission appointed in Pennsylvania about the same time made somewhat similar recommendations. They said.

"It seems clear that this new knowledge makes for a new classification, based not, like that of the Elmira system, on behavior in confinement, nor, like that of the current penology, on the character of the crime committed, but on the exact study of the individual and that the treatment accorded him must be adapted to the results of such study "²³

Belgium in Europe and New Jersey in this country have attempted such a classification.²⁴

Punishments. No sooner were prisons established than punishments

²² *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), Chap. 7

²³ *Journal of Prison Discipline and Philanthropy*, New Series, No. 58 (Philadelphia, 1919), p. 27

²⁴ See Gillin, *Taming the Criminal* (New York, 1931), Chap. VII

were invented. Even under the separate system in Pennsylvania, certain disciplinary punishments were thought necessary. Since each man was confined to a separate cell, human ingenuity was somewhat taxed to inflict any further punishment. Reference has already been made to Dickens's unsparring condemnation of the solitary confinement in the Eastern Penitentiary at Philadelphia.²⁵ As early as 1835, when a legislative committee visited the Eastern Penitentiary they found in existence *a graded system of punishments*. The *first* and mildest was a deprivation of the use of the exercise-yard attached to each cell. The *second* included the forfeiture of a dinner each day for a period of two or three weeks. A *third* was the use of the dark cell. In this often a single blanket was denied the prisoner. Every twenty-four hours the inmate was given eight ounces of bread and some water. His sufferings were intense, especially in cold weather. This committee reported that one convict had been in the dark cell for forty-two days and was suffering from delirium when taken out. A *fourth* was absolute deprivation of food for not more than three days. A *fifth* in degree of severity was "ducking," in which the convict was suspended from the yard wall by the wrists and drenched with buckets of cold water. The severity, of course, of this punishment would vary with the season of the year. A *sixth* was the so-called "mad or tranquilizing chair." It was a large box chair made of planks to which the convict was strapped and his hands placed in handcuffs. For the feet there was no resting place. It was impossible to move body or limbs and pain soon became intense. Arms and legs swelled dreadfully. Added to this there was often beating. *Still another* punishment was the "strait-jacket." This was sack or packing cloth of three thicknesses with holes in front for the admission of the hands. In the back there were rows of eyelets by which it could be laced up very tightly. The prisoner was kept in this jacket for from four to nine hours. This committee found that in the Eastern Penitentiary convicts had been so tightly laced that their necks and faces were black with congested blood. So terrible was the suffering that men of the most hardened character would shriek after a short time as if they were on the rack. *The most severe* and complicated of the methods of punishment which the committee found was the "gag." Under this treatment an insane convict had died, and thus the investigation was precipitated. This mode of punishment resembled the stiff bit of a bridle having a wire mouth-piece and chains. Placed in the mouth of the sufferer, it was drawn tightly toward the jaws, the chains being fixed in place by a lock. The prisoner's hands were placed in leather gloves which had wire staples in them, his arms were crossed behind his back and bound

²⁵ Dickens, *American Notes*, Chap. 7, "Philadelphia and Its Solitary Prison."

by leather straps through the iron staples of the gloves. Other straps were passed around the hands and thence between the chains of the gag at the back of his neck and then drawn tightly, thus forcing his hands up toward his head and his head back and drawing the gag tightly into the mouth. The suffering was almost unbearable and in some cases killed the victim.²⁶ Remember, this was in the institution which had been devised as the most humane of any prison system in America.

Under the silent system at Auburn, where the men worked in association with each other and where the rule of silence was in vogue, the temptation to communicate and otherwise break the rules of discipline was probably even greater than in the separate system of Pennsylvania. At any rate, the early wardens at Auburn found it necessary to enforce discipline by what seem now very savage methods. While that system under the rigid disciplinarians of the early days excited the admiration of the Frenchmen de Beaumont and de Tocqueville, the order and the discipline which they found at Auburn were secured by the severity of the punishments administered by those early wardens. There the rigorous punishments were openly advocated by such wardens as Elam Lynds, who, when asked if bodily chastisement might be dispensed with, said, "I consider chastisement by the whip the most essential and at the same time the most humane which exists."²⁷ He did not think very highly of solitary confinement, which in his experience had proved to be "often insufficient and always dangerous" and asserted, "I consider it impossible to govern a large prison without a whip."

While there were institutions where such severe punishments were not used, such as the House of Correction at South Boston, where it was claimed not a blow had been struck upon a prisoner for over a decade, and no weapons were carried by keepers, and the Connecticut and Massachusetts State prisons, which were operated with a minimum of corporal punishment, in general the methods of punishment in the early prisons were severe and cruel. In 1843, for example, in the Sing Sing prison in some months a total of as many as 3,000 lashes were given the prisoners. The larger the number of prisoners in an institution, apparently, the more severe and cruel the punishments, in order to preserve order. In some of these prisons, built on the Auburn plan, many of those severe punishments which we have noticed in the Eastern Penitentiary were in use, such as ducking and the gag. In Sing Sing, where the lash was not used upon women, the gag was

²⁶ Lewis, *op. cit.*, pp. 221-222.

²⁷ de Beaumont and de Tocqueville, *op. cit.*, p. 201.

sometimes employed. Strait-jackets were used, and reduction of meals to bread and water was common.

In our day these methods seem to be uselessly severe, yet corporal punishment was then in general use in free society. Floggings were customary in the navy, at home, and at school, and even such a humanitarian as Dorothea Dix agreed that for refractory cases the lash had to be used as a last resort.²⁸

Present-Day Methods of Discipline. The spirit out of which those severe punishments grew is still retained in many of our prisons.²⁹

Solitary confinement is still frequently used. In some prisons it is the only form of punishment except the deprivation of privileges now tolerated. These cells are usually dark cells, practically sound-proof as well as light-proof. While in them the man is given a very much reduced ration and is kept there until he promises to mend his ways or until the doctor orders him released on account of his health. The following gives the reaction of the prisoner to this method of punishment:

"Solitary confinement never did any man any good. Repression don't reform a man any more than chaining up a dog makes him gentle. . . . I don't care how bad a man has been, he can be got. But solitary confinement, with the jacket and kicks and abuse, will never make a man better. I'm not as good a man as I was before I went up there "³⁰

It should give us pause that, in spite of the passing of more than a hundred years since the establishment of our American prison systems and in spite of the frequent discussion of the subject of prison discipline, severity, although lessened, still prevails widely in our prisons.³¹ The experience, however, of the last seventy-five years has tended to soften the punishment for infraction of rules. Discipline there must be, but it has begun to appear to certain wardens that there are other methods than severe repression. Says Dr. Frank Christian of the Elmira Reformatory:

"In the administration of discipline we have entirely abandoned the former desire for vengeance, retribution and repression and now strive always for prevention and reformation. Silence and discipline are no longer synonymous terms in humane prison management. Traditional practices and lack of humane and

²⁸ Lewis, *op. cit.*, p. 328

²⁹ *Journal of Prison Discipline and Philanthropy*, New Series, No. 58 (Philadelphia, 1919), p. 29, Leavitt, "The Man in the Cage," *American Magazine*, February, 1912, p. 535

³⁰ Lowrie, *My Life in Prison* (New York, 1912), pp. 214-215

³¹ *Report of the Prison Inquiry Commission of New Jersey* (Trenton, N. J., 1917), I, 73, 74.

intelligent administration are still responsible for the continuance of repressive measures. The old method considered only the offense against discipline and avoided the real issue, the offender, his responsibilities and his motives.”³²

THE PSYCHOLOGY OF PRISON BRUTALITY

What is the psychology which leads prison officials to use harsh methods in the control of their fellow-men? The men in charge of our prisons are not all beasts in human form. Many of them are men of personal uprightness and good citizens. But they are dealing with some of the most desperate criminals in the world and with others who are decidedly abnormal. Remember that (1) *life in a prison is a very abnormal life*. Here are gathered together hundreds of men living under conditions quite unusual. There are no home influences, they are brought into contact with no women and children, and their relationship to the guards and other officials is on a very unnatural and unsocial plane. Many of them are victims of previous habits which still dominate them. Moreover, in such an unnatural situation and with such a population, sexual vice flourishes in the most perverted forms. It has been estimated that from 5 to 6 per cent of the entire population of prisons are perverts of a very low type, mastered by elemental passions which ordinary men know not the force of because they have kept them under control. Such men contaminate every one with whom they come in contact, if possible. The result is that the prisons have been described as “literally dens of bestiality.” With this type of depravity the wardens and guards have always to battle. In spite of everything they can do, they cannot stamp it out. Occasionally even the officers are contaminated and become accomplices.³³

In addition to these difficulties, wherever the silent system prevails, (2) *discipline must be exercised to prevent communication*. One of the gifts which differentiate men from the lower animals is speech. Therefore, when the attempt is made to prevent so natural and desirable a thing as speech with one’s fellows, repression is inevitable and punishment multiplies as naturally as vegetation where there is warmth, moisture, and good soil. When, therefore, the officials discover men in communication they become exasperated and often lose that balance which under other conditions they would maintain.

Added to these considerations are (3) *the unnatural conditions in which the prison officials themselves live*. Consider the irritation of living with

³² *The Management of Penal Institutions* (Elmira, N. Y., n. d.)

³³ Leavitt, “An Ounce of Correction, a Pound of Corruption,” *American Magazine*, April, 1912, pp. 719-729. Fishman, *Sex in Prison* (New York, 1934).

men whose interests are diametrically opposed to the responsibilities with which you are charged. Their life's business is carried on in an atmosphere of emotional repression and often of stern discipline. The official is in absolute authority. Those under him are practically his slaves. He associates, therefore, during most of his waking life with those who are under constant suspicion. He is subject to as unnatural a social position as are the prisoners. He is constantly engaged in a game of wits with the suppressed prisoner. The latter is constantly tempted to beat the rules of the prison game, and the official as constantly strives to prevent him from doing it. Consequently there is no ground for common, human sympathy.³⁴

Add again (4) *the ingratitude of the prisoners toward the officials' efforts to reform them*. Suppose that the official comes in with the desire to help these men. He finds no response, no cooperation unless it be for the purpose of hypocritically playing upon his good wishes for selfish advantage. How natural, therefore, to become convinced that most prisoners are incorrigible crooks and immutable ingrates. A deputy warden told me that he would not believe most of the men in his prison upon oath. How natural, therefore, when all his efforts on behalf of the prisoner, under the system of repression, are met by contempt, effective even though silent, that thoroughly good men turn to bitterness and cruelty.³⁵

To these factors in the psychology of prison cruelty should be added the fact that (5) *some criminals themselves make brutality almost inevitable*. There is the prisoner who has been an enemy of private safety and public welfare. He has struck in the dark and taken advantage of human liberty. He has outraged all of the sentiments and considerations on which human life is organized. Trained in such habits, he carries them with him to the prison and there makes it impossible for prison officials to treat him as they would treat him in ordinary human relationships. Because this kind of prisoner is mixed up with others and it is difficult in mass treatment to individualize the treatment of such men, prison brutality is almost inevitable for those who are of a different nature but must be treated as though they were all of this kind. Until the really anti-social criminals are separated from those who have broken the law but are not habitual criminals, prison cruelty is inevitable under our present system.³⁶

Consider also the whole prison set-up. Here are men deprived of liberty against their will. The officials are charged with keeping them safely, with

³⁴ *The Prison and the Prisoner, A Symposium* (Boston, 1917), pp. 118, 120.

³⁵ Tannenbaum, "The Psychology of Prison Cruelty," *Atlantic Monthly*, April, 1920.

³⁶ "The Background of Prison Cruelty," by Number 13, *Atlantic Monthly*, August, 1920.

keeping order in an unnatural situation, and with keeping them at work. Often the officials consider the prisoners very much below them in social status. The prisoners are denied the natural expression of their impulses. The officials are their enemies. The whole situation is one which (6) *develops a distinct consciousness of kind in each class, the officers and the prisoners.* Since the officers are representatives of the public, the prisoner feels aggrieved at society. The public widens the gulf still further between the prisoner and the public by passing stringent laws like the Baumes Act in New York and by treating them as a class without discrimination as to individual differences and without discernment as to the varied effect of any given treatment on individuals of different make-up. Thus society makes the class consciousness between society and the offender more acute. Just the contrary treatment should be applied. Every effort of society through the prison officials should be to lessen the social distance between the prisoner and society. Out of this difficult situation grew the horrible barbarities which, until recently, were found in most of our prisons and which still remain in some.

The psychology of prison brutality cannot be understood without reference to (7) *the kind of men who are now employed to manage our prisons and their lack of training for this important work.* The last twenty-five years has seen a remarkable development in the study of human motives. The psychoanalysts, in spite of exaggerations, have uncovered a rich field hitherto imperfectly understood. The psychology of repression, with its issues in human conduct, the members of this school have helped us to understand. The whole psychology of the subconscious was never before so thoroughly explored as by these investigators. How much of our blundering with the direction of human conduct in school, in church, and in the home is due to the lack of understanding of the motivation due to repression these scholars have revealed to us.

While some of the leaders in our correctional institutions for juveniles have become acquainted with this field of investigation and are remodeling their methods of discipline accordingly, prison officials have been strangely ignorant of this progress in social psychology. It is clear that much of the prison cruelty and stupidity is due to lack of understanding of the men with whom prison officials deal. There is no question that the universities each year are turning out dozens of young men and women from their graduate departments who are infinitely better prepared by an understanding of psychology and sociology to deal with these difficult problems than most of the present prison officials. Why is this source of properly prepared men and women not tapped for the benefit of our correctional institutions?

QUESTIONS AND EXERCISES

1. What are the three great objectives of prison administration?
2. Outline the different kinds of boards which manage and supervise prisons. Read Robinson, *Penology in the United States* (Philadelphia, 1921), Chapter 13.
3. What is the difference of administrative function in management and discipline?
4. What changes have occurred in methods of getting economic production out of prisoners from the days of Elam Lynds to the present?
5. What changes have taken place in methods of prison discipline from the days of Jeremy Bentham to the present?
6. Analyze the elements in the situation to account for brutality in prison discipline.

CHAPTER XXIII

PRISON ADMINISTRATION: RECENT EXPERIMENTS

CERTAIN REFORMATORY MEASURES IN PRISON DISCIPLINE

IN the early history of prisons in the United States to allow prisoners any privileges in the prison was thought to be incongruous with the purposes of prison discipline.¹ Attempts have been made to mitigate somewhat the awful isolation of prisoners, to allow them certain privileges, and to bring to bear upon them certain positive influences for good. It has come to be believed in some quarters that by allowing obedient prisoners certain privileges good conduct is promoted. These privileges include writing letters to friends and relatives, an occasional visit with friends in the prison, tobacco, reduction of sentence by what is called "good time," and allowing obedient prisoners greater liberty than the others, educational opportunities, music, books, recreation, outdoor work, and newspapers and magazines.

Visits and Mail Privileges. While originally in the Pennsylvania prison no communication whatever with relatives or friends was allowed, in most of our prisons the obedient prisoner is now allowed to write a letter every fortnight and to receive a visit once a month. However, only a few of the States allow unrestricted mail privileges. In 1916 there were only eight, five of these in the South, viz.: Arkansas, Alabama, Florida, Louisiana, Mississippi, the other three being Arizona, Nevada, and Rhode Island. Since then certain other States have been granting unlimited mail privileges for all well-behaved prisoners. Says Mr. Sanders of the Arizona prison: "The abominable rules in force in nearly all American state prisons restricting prisoners' mail are a lasting disgrace to our American civilization. As well expect a giant cactus to grow and develop at the North Pole as expect men and women to become better citizens in a prison holding to these dark-age customs of restricting the writing and receiving of letters, magazines, periodicals and newspapers. Cut loose the anchor that binds them to the past and give the man and woman in prison every opportunity to grow and develop."² He adds: "The wonder to me is that there is not more rioting

¹ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), pp. 172-173.

² Sanders, "Mail Privileges for Prisoners," *The Survey*, August 16, 1916, pp. 519-520.

in the institution denying the prisoners the right of communicating with their loved ones whenever they desire.”³ In most prisons this privilege is being extended in frequency.

Cell Privileges. In most of the prisons until recently prisoners were not permitted to have any articles except those furnished by the prison. At the beginning of this century, for example, at San Quentin the furniture of a cell provided by the state consisted of a bunk, a small deal table, a stool, a water-can, a coal-oil lamp and a slop-bucket. In spite of the rules, prisoners have always persisted in taking contraband articles into their cells. The result was a perpetual warfare between the prisoners and the guards over these matters. The attempt to fix up the cell by the introduction of any other articles was often a breach of discipline and subjected the man to punishment.⁴ Now in an increasing number of our prisons the first-class prisoners are permitted to adorn their cells.

It has been found that by allowing prisoners a certain small amount of tobacco their irritability is lessened. In some prisons they are allowed to smoke, but only in their cells. Those who chew are usually not restricted in this way. However, the amount of tobacco is definitely limited. It is therefore very valuable and serves as a medium of exchange between the prisoners in many prisons.

“Good Time” Reduction. The possibility of reducing sentence by “good time” goes back to the warden of the Massachusetts State prison in 1843, who suggested to the inspectors that, as an encouragement to the prisoners, they be allowed one or two days each month off the sentence in case of good conduct. While the suggestion was not adopted at that time, it has since been quite universally established in the prisons.⁵

During the course of prison history in the United States the invention of certain other devices has been prompted by disciplinary and reformatory motives. Among these are religious influences through the chaplain, the prison school, the prison library, the prison newspaper, the honor system, and prison democracy or self-government.

EDUCATIONAL MEASURES

The Chaplain. The chaplain was introduced into prisons in the early days of their history in the United States, under the theory that what prisoners needed was religious conversion. In most cases, even in those days, the only result was hypocritical conversion for the purpose of getting

³ Sanders, *Prisoners' Mail* (Florence, Ariz., n. d.).

⁴ Lowrie, *My Life in Prison* (New York, 1912), pp. 73 ff, 214 ff.

⁵ Lewis, *op. cit.*, pp. 168-169.

an easier life and securing privileges. Nevertheless some of these chaplains awoke to the problems of their charges and attempted to introduce certain constructive measures.

The development of the work of chaplains since those early days has been quite marked in some prisons. Less emphasis is now being placed on getting the men converted, and more emphasis on the social function of the chaplain. This does not mean that he is not to bring to bear upon such men as are open to it the influence of religion, it does mean that his religious function must result in pressing those ideals and bringing to bear those religious motives which lead men to conform in conduct to the usually accepted standards and to make religion bring forth fruit in social activities. While the chaplain still preaches the gospel to the prisoners *en masse*, his greatest success, so far as his religious activities are concerned, is in introducing individuals to nobler ideals and arousing in them the religious motives to good conduct.

The most thorough recent study of the chaplain and his functions is that made by the New York Prison Survey Committee in 1920. That committee asked a number of clergymen representing the Jews, the Protestants, and the Catholics to make a study of the situation in New York State and present a report to the committee. These gentlemen made the following interesting suggestions:

(1) That the State provide the chaplain with adequate facilities as it does other professional men engaged in work with prisoners.

(2) That in connection with the chapels a parish hall or room should be provided where the chaplains could meet the men for advice, spiritual ministration, and guidance.

(3) That the governor or superintendent of prisons should appoint a State board of chaplains consisting of representatives of Roman Catholic and Protestant churches and of the Jewish synagogue. A majority of its members should visit each prison of the State at least once in six months to inspect the religious work of the chaplains. These men should serve without pay but should have their expenses provided for. The purpose of this suggestion is that through such a board there should come about greater unity in the religious work of the prison through the formation of a definite policy.

(4) The chaplains to be appointed should be representative of the religious faiths to which they hold and should be suggested for appointment to the Superintendent of Prisons by the head or governing body of the particular faith which each represents.

(5) The chaplain should not be looked upon as a person merely to be tolerated in the prison but should have a well-recognized position with clear-cut functions.

in the prison. As chaplains they should be provided such opportunities and accorded such dignity as is comparable with the head of a parish of equal importance.

(6) They should be relieved of various clerical and routine duties, such as taking a prisoner's history, inspection of mail, etc., in which they are placed in a position of withholding from the prisoner some information or confidence which often interferes with the particular work for which they are employed. The committee suggested that the library should be under the educational department of the prison, in cooperation with the board of chaplains.

(7) The chaplain should be a resident officer, instead of merely a visiting official. To this work he should give his entire time, and he should be provided with adequate facilities.

(8) The chaplain should be given opportunity to do the social work needed in the relations between the prisoners and their families. Many times readjustment in relationship is necessary upon the prisoner's discharge. If the chaplains are free to make proper arrangements with various church agencies, prison societies, and secular bodies, opportunity is thus provided both for information and for counsel and in preparing for the prisoner's future upon his release.

(9) The chaplain should be given opportunity to present the purposes of the prison to the public. Knowing these men rather intimately, understanding their spiritual problems, a properly trained man is prepared to present the work of the prison to the community in a way that would make for proper attitudes toward the prison and the men upon their discharge.⁶

The Prison Library. The chaplains were among the first to notice that a considerable portion of the convicts could not read and write. In 1844, 536 of the 861 prisoners in Sing Sing could neither read nor write, while 210 others could read but not write. Only the better prisons maintained libraries, although a Bible was generally supposed to be in each cell. Connecticut had a small library and also furnished each prisoner with a weekly temperance paper and a religious paper. By 1845 in the Massachusetts prison a library was being maintained by an appropriation of \$100 per year from the earnings of the convicts. Books of a religious and moral nature could be taken out and returned by the prisoners weekly.

In the early period, in such prisons as had libraries, books were distributed at intervals of several weeks at the discretion of the chaplain and the warden. It was early noticed that the freer the use of books, the fewer the cases of discipline. Occasionally small numbers of books were donated by citizens. As early as 1845 this led to regular study by some prisoners in

⁶ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), Chap. 14.

their separate cells in the Western Penitentiary of Pennsylvania. Such subjects as arithmetic, geography, and history were studied by the inmates of this prison.⁷

To-day almost every prison has a fairly good library, although much is still to be desired in the number and variety of books. Now the prisoner is allowed one or two books a week and an effort is made to direct his reading along the lines of his interest and his vocation, although there are also to be found books of fiction and those of general interest. Frequently in the prisons now inmate librarians assist the chaplain in this work.⁸

Newspapers. Some prisons, as time went on, permitted the ordinary newspapers to enter the prisons, while in others a newspaper was strictly contraband. In many prisons, even to-day, the only newspapers allowed are the various county papers. There is probably some reason for not permitting the sensational journals with their scare headlines and vivid delineations of crime, with their stories of scandals and with the mass of unimportant, if not dangerous, material, to be read by the prisoners. To correct this tendency, and yet to give the men an opportunity to know what is going on in the world, a number of the prisons and reformatories have established prison papers.⁹

The reformatories for adults were the first to emphasize the value of an institutional paper. The *Summary* was established by Mr. Brockway at the Elmira Reformatory in the '80s. Many of the adult male reformatories now have such papers, and some of the prisons.¹⁰

To-day it is believed that the prison paper provides *a means for the education of the prisoner*. Sometimes the chaplain edits the productions of the prisoners, and in this way the writers are given some instruction in the technique of composition and newspaper writing. Gradually the printing of the paper and other printing that the press was able to do has become a means of vocational training for some of the prisoners and has enabled others to continue the vocation in which they were engaged prior to imprisonment. In addition to the productions of the prisoners themselves, selections from great literature provide food for thought for the men and are believed to have a good influence. While the prison prose written by the

⁷ Lewis, *op. cit.*, pp. 341-342

⁸ National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole*, pp. 118-122

⁹ For special reference to some of these papers, see Henderson, *Penal and Reformatory Institutions* (New York, 1910), pp. 236-238

¹⁰ Two of the most enterprising and interesting of such publications which come to my desk are *The Agenda* of the Washington State Prison and *The Bulletin* of the San Quentin, California, prison

inmates is often very good, many of the men under the conditions of life in the prison seem to run to poetry. On the whole this is rather poor stuff, although occasionally some rather good poetry is produced. It is frequently, however, much stronger in sentiment than in poetical form. However, the prison paper provides to a limited degree an outlet of expression in an atmosphere of repression.

A few examples of what is printed in these papers will illustrate what has just been said concerning them. Here is an excerpt from an editorial entitled "A Definition of Practical Christianity":

"If this definition be drawn from the teachings of Jesus in regard to human conduct and the example of his own practices nothing can be simpler. The least sentimental business man, whose ethical notions of honesty are governed entirely by motives of expediency and policy, will readily admit that the teachings and practices can be followed in the daily actions of life without inconvenience—even with profit. They will even admit that the practice of patience, charity, compassion, and good will to fellow man alone brings lasting peace.

"Religion is a human instinct . . . the human heart reaching upward toward God . . . Christianity as exemplified by the divine Nazarene is the highest development yet attained, and the dream of Ben Adhem has become true: he who most loves his fellow man is best beloved of God."¹¹

The following represents a clipping from a New York prison paper:

MY CREED

"I would be true, for there are those who trust me;
I would be pure, for there are those who care;
I would be strong, for there is much to suffer;
I would be brave, for there is much to dare
I would be friend of all—the foe, the friendless;
I would be giving and forget the gift,
I would be humble, for I know my weakness,
I would look up—and laugh—and love—and lift."¹²

Here are a few chosen at random which show the prison attitude toward everyday affairs:

"Never mind waiting for Opportunity to knock upon your door. Open 'er up wide, and hide over behind the desk. When Opportunity comes in, slam the door quick, grab him around the neck, and *don't let go*, till you are certain of your mastery."

¹¹ Henderson, *op. cit.*, pp. 254-255

¹² *Ibid.*, p. 255

"Are you doing your work right? Have you commenced to lay the cornerstone—the part-structure that must bear future inspection? If not, why not? Surely you can see that to delay building identifies you as being shiftless and unreliable! You would not like it said that you are seeking a return trip to prison! Yet, making no effort, evidencing no desire to build a new structure, so to speak, classes you of the number of men who find prison and its environment homelike."

"Quit your whining; brace up, go to work, be something, stand for something, fill your place in the universe. Instead of whining around, exciting only pity and contempt, face about and make something of yourself. Reach up to the stature of manhood and womanhood. There is nothing the matter with you. Just quit your whining and go to work."

"Turn over a new leaf, fellows! Begin to-day! Do not foolishly refuse to work, for you are ALWAYS the loser. And you fellows who do not exactly refuse to work, but who do your work in a slovenly manner and only half complete it, you, too, are forming habits of laziness which will cling to you as barnacles do to the bottom of a ship."

"Though you may not meet with the loved ones to-day as you would like, you can at least give your memory the pleasure of going back to those good old days when you were a care-free child. A merry Christmas to you!"¹³

Most of them have copious jokes. A few samples will indicate their character:

"*New arrival*: Mister officer, haven't you any interpreting work that I could do? I speak seven languages'

"*Officer*: We speak only one here and very little of that'

"*Gee!* as he gazed across the field at the snow-clad hills, 'Last year at this time I was coasting and skating and *now I am here*.'

"*Cheer up, Georgie!* Next year will have its snow and ice, you know'"¹⁴

HEARD IN THE COURTROOM

"An Irish witness was being examined as to his knowledge of a shooting affair.

"Did you see the shot fired?" the magistrate asked

"No, sir, I only heard it"

"That evidence is not satisfactory," replied the magistrate sternly. "Step down"

"The witness proceeded to leave the box, and directly his back was turned he laughed derisively.

"The magistrate, indignant at this contempt of court, asked him how he dared to laugh in court.

¹³ Henderson, *op. cit.*, pp. 255-256.

¹⁴ *Ibid.*, p. 258.

"Did you see me laugh, your honor?"

"No, sir, but I heard you"

"That evidence is not satisfactory," said the witness, with a twinkle in his eye.

"At this everybody laughed except the magistrate."¹⁵

Warden: Have you ever been in any European jail?

Prisoner: No, my motto has been to see America first"

Kind lady: The reason why so many men go to prison is that they lack convictions.

Burglar: Not me, I've had six convictions."

"Some of the inmates who have been commuting between New York and Sing Sing for the last twenty-five years should apply to the Central Railroad for a commutation ticket at reduced rates and save the state money."

"They were building a road the other day and an automobile came along. The prisoners stepped aside to let the auto pass and the driver leaned out and excused himself for taking so long

"That's all right, Mister," said a gray-haired prisoner, "take as long as yer wanto. I've got ten years."¹⁶

One other purpose served by prison journalism is that these papers serve as a method of *informing the outside world of the life of the prison*. This new trend began to appear about 1915. More than twenty-five of these institution journals now reach the outside world, and their purpose is to further the cause of prison reform. This aspect of prison journalism has attracted the attention of writers in outside newspapers. While once the prison press refrained from criticizing penal institutions, the recent trend shows a tendency freely to express the prisoners' opinion on reformation suggested by outside people and to criticize reports on penal methods.¹⁷

The Prison School. Out of the simple beginnings cited in a previous chapter and the rudimentary educational system in Crofton's Irish System grew the program for the training of young prisoners in the Elmira Reformatory in the '70s. This conception has now spread to some extent to the prisons, since we have come to feel that the proper way to prepare the men for life outside is to give them some training in the things which their previous life denied them.

So far as penological theory is concerned, what are the objectives of education for prisoners? Since the great majority of prisoners are released again into free society, should not the objectives include those sought for

¹⁵ *The Joliet Prison Post*, May 1, 1914, p. 268

¹⁶ *Star of Hope*, August, 1916, pp. 30, 31

¹⁷ "The New Prison Journalism," *Literary Digest*, January 22, 1916, pp. 179-180.

any adult? It seems that the following types of education should be provided for prisoners: (1) *Elementary educational fundamentals* to provide the tools needed in further study and training and in everyday life. Of the 120,000 adult prisoners now in American prisons and reformatories, about one sixth cannot read a newspaper or write a simple letter. Over seven twelfths cannot pass the sixth-grade work in public schools. About the same proportion have not had organized training for an occupation. Nearly one third have a vocational training less adequate than their intelligence rating would indicate to be possible and desirable. (2) *Training for an occupation.* About seven twelfths of the 120,000 are unskilled workers. Often they get into difficulty by reason of this economic handicap.

The Prison Survey Committee in New York suggested a careful study of the incoming man to ascertain for what vocation he is best adapted and to provide him with training for that work.¹⁸

This survey showed that in 1920 from 12 to 20 per cent of the total prison population in New York were capable of learning a skilled vocation requiring initiative, intelligence, and skill. From 22 to 25.5 per cent were capable of doing the factory type of work. In other words, somewhere in the neighborhood of 40 per cent were capable of industrial training for skilled or semi-skilled vocations. It is upon this 40 per cent that the prison should concentrate its energies in the endeavor to educate men for a return to useful economic life when released. For the others, something perhaps can be done in the way of teaching them good habits of work at less complicated positions.¹⁹ (3) *Health education*, intended to acquaint prisoners with the fundamentals of personal and community hygiene. The recreational program of the institution should be geared into this training. (4) *Cultural education.* The prisoner finds plenty of time on his hands which even now he sometimes uses to secure acquaintance with the best thought of the ages. Many prisoners have found in prison for the first time the intellectual joy of sharing the thoughts of great minds. (5) *Social education*, which includes acquaintance with fields of knowledge relating to ethical conduct in the complex conditions of free society.²⁰

Prison administrators who have experimented with education of interest to the prisoners have found that (6) *it very greatly aids discipline.*

¹⁸ *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), p. 162.

¹⁹ *Ibid.*, pp. 106-109.

²⁰ McCormick, "Education in the Prisons of Tomorrow," *The Annals, American Academy of Political and Social Science*, September, 1931, pp. 72-77, *The Education of Adult Prisoners* (New York, 1931).

For the most part, however, any program for the education of prisoners is still largely an ideal. The State responsibility in this respect, however, will not be discharged until after careful investigation of the men and more extended experience it has been determined just what educational measures are useful for the purpose of rehabilitating prisoners for a useful life in the world.

The United States Bureau of Education has taken an interest in these schools. In 1913 it published a study of the prison schools in the United States and Canada.²¹ From another study made by the United States Bureau of Education in 1923, it appeared that in the ten years between the first study and the later one some progress had been made, chiefly in the direction of focusing public attention and clarifying thought on the possibility of reformation through education. San Quentin prison in California, according to this report, seemed to lead the prisons of the country in its educational emphasis. Almost half the men pursuing correspondence courses in the prisons of the United States in 1923 were in this prison. The following statistics²² were obtained for this last study:

Number of prisons reporting	48
Number of schools reported	39
Number of inmates in prisons reporting	50,677
Number of inmates in schools reporting	9,150
Number of illiterates entering prisons	2,859
Per cent of illiterates	5 6
Per cent of men in school	18 33
Per cent of men under 20 years of age	15
Per cent of men between 20 and 30 years of age	42
Per cent of men over 30 years of age	43

A comparison between the figures given for the two years shows that a few less prisons reported schools in 1923 than in 1913. However, it must be remembered that the statistics in neither of these reports were complete.

Taking it all in all, the educational situation in our prisons is very bad. One fifth of them have no educational program whatever. In about the same number educational work of some significance is being carried on. In the remaining three fifths what is called education is almost valueless. The best programs are to be found in the reformatories for women. Nevertheless, some promising beginnings have been made in men's prisons and reforma-

²¹ *Prison Schools*, Bulletin No 27, Whole No 537, 1913, United States Bureau of Education, p 15

²² *Schools for Adults in Prisons*, 1923, Bulletin No 19, 1924, United States Bureau of Education, pp 3, 23, 24

tories. In California and Wisconsin the most effective work is being done by the extension divisions of the respective State universities. In California, Kansas, and New Hampshire the State departments of education have begun educational work in the prisons. In Ohio a beginning has been made by the State Department of Vocational Education. In the new prison at Jackson, Michigan, a rather extensive educational program has been set up. Pennsylvania has developed a promising educational program in its Huntington Reformatory for men. In Illinois at Menard and at Joliet beginnings have been made. The program at the Pontiac Reformatory has been improved. New Jersey made a start a few years ago with education in the prisons, and the State Library authorities have become interested. In Wisconsin and Minnesota the Free Library Commissions are doing splendid work in providing books to the prisoners which are not in the prison library. Under the new administration of the Federal Prisons the Federal Bureau of Prisons has an entire division devoted to promoting education and library work in the Federal institutions.²³

Supervision has been one of the grave difficulties in connection with the prison schools. The New York Prison Survey Committee in 1920 proposed that this difficulty should be solved by the State Department of Education coöperating with the prison board in placing a civilian supervisor in each of the institutions.²⁴

In a number of European countries educational programs are being developed. These on the whole are of a somewhat more informal nature than in the United States. For example, in Germany the educational programs vary with the different states. In certain of the Prussian prisons in 1932, as for example at Celle, there was an educational director in charge of the entire program intended to develop the prisoners intellectually and socially. In Thuringia the emphasis was upon education of a group nature, largely through the organization of the highest grade (*Stufe*) prisoners but in close contact with certain of the officials charged with this aspect of their treatment. In that state the development of what was called the *Fursorger*, or what corresponds somewhat to the scientific social worker, had educational value. In general in Germany the social development of the prisoner was not so dependent upon formal educational activities as with us.²⁵

²³ McCormick, "Education in the Prisons of Tomorrow," *loc. cit.*, p. 74, see also *Handbook of American Prisons*, 1929 (New York, 1929), "Education," under each of the various institutions described.

²⁴ *Prison Schools*, Bulletin, Whole No. 537, 1913, United States Bureau of Education, pp. 17, 18; *Report of the Prison Survey Committee, State of New York* (Albany, N. Y., 1920), Chap. 13.

²⁵ von Hentig, "Germany's Prison System," *Annals, American Academy of Political and Social Science*, September, 1931, pp. 174-179.

In Belgium, aside from the incidental learning of a trade in her institutions, the avowedly educational features are confined rather closely to the institutions for young adult offenders. She has an industrial school and an agricultural school for young adult delinquents. However, here as in Germany the educational process is much more dependent upon careful study and individual treatment by the officers than upon formal classes.²⁶

The modern Russian prison system under the Bolsheviks has an educational set-up closely integrated with the system of schooling to be found in free society. Elementary classes are held in the prisons and correctional colonies besides the informal education through self-government activities and the organization of clubs, classes, etc., and the activities of the Red Corner in each prison. Just as the factory or the collective farm carries on adult education, so the prison or the correctional colony, whether agricultural or industrial, provides a carefully worked-out program of educational activities.

The Honor System. In recent years a great deal has been said about various methods to replace the old methods of repression and brutality in the government of prisoners. As we have seen, various experiments were made quite early in self-government.

The honor system, i.e., trusting men to govern themselves either within the prison or on special duty outside, has since been rather largely employed in our prisons. Not all men, of course, can be put upon their honor and trusted. Very careful selection must be made, and even then frequently the "trusty" escapes.

Perhaps the best results of the honor system have been seen in the road work by gangs of prisoners and other outside work like farm work, forms of labor very much more desirable to most prisoners than work within the walls. The motive which keeps these men from escaping is the fear that they will be sent back inside the walls if they attempt to escape and are recaptured. Since they prefer the work outside, where there is relative freedom and less severe discipline, motives of self-interest control their conduct.

It must be admitted, however, that the honor system within the walls has its limitations by reason of the fact that only a small proportion of the inmates of a prison can be relied upon when outside the walls unless under strict guard.

Moreover, it has been charged that the honor system produces hypocrisy, which has its worst development in the "stool-pigeon." A "stool-pigeon"

²⁶ Gillin, *Taming the Criminal* (New York, 1931), pp 194-201; Frede, Vollrath, and others, *Gefangnisse in Thuringen, Berichte über die Reform des Strafvollzugs* (Weimar, 1930).

is a prisoner who is given special privileges for keeping the officials informed concerning any plots or disobedience of the regulations within the prison. Moreover, it is not self-government but benevolent despotism, heading up in the prison official with the honor men his subservient tools. It appeals to selfish motives and does not stimulate initiative or self-control when outside the influence of the dominating personality of the warden or other officials.²⁷

Prison Democracy. A plan for the government of prisoners diametrically opposed to the honor system is inmate self-government or, as it is sometimes called, prison democracy. This plan originated with Mr. Osborne of Auburn, New York, when in 1913 as a member of a prison commission appointed by the Governor to study the prisons of New York, he spent a week in Auburn prison to find out for himself conditions in the prison. As a result of Mr. Osborne's experience and his talk with a number of inmates, he helped to organize what was at first called a Good Conduct League, to be officered and managed by the inmates. On Lincoln's birthday, 1914, the first meeting of this League, now called the Mutual Welfare League, was held at Auburn. It was frankly an experiment to see what the prisoners could do in the problem of self-government. A year later a branch of the League was organized at Sing Sing.

When it first started, its activities were absolutely in the hands of the prison authorities. Whatever it did was with the consent and under the close supervision of the warden and subject to his proper authority.

The organization of the League was simple. At Sing Sing it was as follows:

Each industrial or maintenance unit elected one or more representatives to the governing body of the League, called the Board of Directors. The election of these representatives was entirely in the hands of the inmates, without pressure or dictation of the authorities, on the theory that otherwise the men would lose faith in their representatives. This board elected a secretary of the League and from its own number an executive committee of nine. This executive committee appointed the necessary number of assistants to keep good order and discipline in the prison. There were nine subcommittees, each headed by one member of the executive committee. These committees at Sing Sing were membership, industries, hygiene, education, athletics, entertainment, music, visitors, and outside employment. When there were any cases of discipline, court was held each afternoon and the offenders brought before this judiciary body or court. The members presided in turn and a majority decided what was to be done. Punishment

²⁷ Osborne, *Society and Prisons* (New Haven, Conn., 1916), pp. 212-216.

consisted of exclusion from the League with the consequent loss of all privileges. An appeal was provided for to the warden's court, consisting of the warden, the principal keeper, and the doctor. At Sing Sing, election of directors was held every four months and the prisoners were expected to vote without dictation or direction from the authorities. The discipline of the prison under this plan was largely in the hands of the League. Guards were withdrawn from the mess hall, the workshops, the school, and the chapel. However, the guards on the walls were increased. The League had charge of the recreation; baseball was organized; there was a swimming pool for the summer and walking in the cell yards for exercise in the winter. After the count had been taken in the cells after supper, educational classes, lectures, and entertainments were carried on, also by the League. Attendance at all of these was limited to members of the League in good standing.

The fundamental psychology of the League is that men must be prepared for self-control outside the prison by organized self-control within the institution. It is further felt that many of the difficulties which arose under the ordinary disciplinary system are done away with when the control of the men is in the hands of the members of their own group. It is held that the League also stimulates initiative, gives opportunity for self-expression and develops regard for others, because if the League fails to maintain good discipline, the privileges provided by it are forfeited. Instead of endeavoring to crush the prisoner's spirit, it tries to encourage loyalty to his pals and to the prison community by making it worth his while to have a well-ordered society within the prison. As Osborne says: "It does not wish to produce good prisoners, it aims to train good citizens."²⁸

This idea of self-government has found acceptance in a number of institutions besides Auburn and Sing Sing, into which Mr. Osborne personally introduced it. About the same time that Mr. Osborne organized the Mutual Welfare League at Auburn, Calvin Derrick organized a system of self-government in the Preston School of Industry at Ione, California. This was based upon the principles underlying the work at the George Junior Republic at Freeville, New York, with which Mr. Derrick had been associated for a number of years. The Preston School of Industry had been an old-fashioned reformatory and had a rather bad reputation. It contained about as tough a lot of boys and as high-grade a set of officers as any institution in the country. Hiram Johnson, then governor of California, and the Board of Trustees agreed that Mr. Derrick should have a free hand to apply his theory for two years. If at the end of that period his plans did not work out well,

²⁸ Osborne, "Self-Government by the Prisoner," in *The Prison and the Prisoner, A Symposium* (Boston, 1917), pp. 101-106

he was to retire. In spite of prediction of many of his friends and of many prison and reformatory officials throughout the country that the plan would fail, Mr. Derrick carried it through with great success.

Mr. Derrick, after a careful survey of the inmates, classified them and excluded from the plan of self-government "the moral perverts, those afflicted with venereal disease in a dangerous stage; and those having a record as sodomists and who are known to us as unable to overcome the disease" In addition were excluded a small number of unbalanced, defiant boys who by reason of their dispositions were unable to live peacefully and efficiently except under control and restraint. In other words, about 10 per cent of the inmate population was not admitted to this plan of self-government. In addition to this safeguard, every complaint against any boy, whether trivial or serious, by either the inmates themselves or by the officials, passed through the hands of Mr. Derrick's second assistant, and all complaints dealing with immorality by the boys or those requiring pathological study and those peculiar deviations from moral conduct which could not, or in justice to the boys should not, be handled by the inmate court, and also all derelictions by those excluded from self-government were handled by the officials. The remainder of the cases went to the inmate court for settlement. Appeal was provided for to the supreme court of the institution, over which the superintendent presided. In three years there was only one appeal to this court.

This plan leaves to the boys matters which are very much like those which are left to the discretion of boys of the same age in free society, such as the social activities, including home activities, playgrounds, inter-relations of the boys with each other, group work, home study and discipline, military affairs, and certain unskilled lines of manual labor. The whole plan is based upon the idea that just so far as possible the boys should be given responsibility which retrains them to act properly when they are released.²⁹

The self-government movement spread rapidly for a time. It was introduced into a number of the county penitentiaries in the Eastern States, in some of the reformatories, and certain of the prisons. Mr. Osborne introduced it at the Naval Prison at Portsmouth, New Hampshire, when he was commandant during the World War.³⁰

These various experiments in prison democracy have been studied and criticized from many points of view. At Sing Sing Mr. Osborne was charged with a very serious crime, but on trial he was exonerated. The system has

²⁹ Derrick, "Self-Government," *The Survey*, September 1, 1917, pp. 473-479

³⁰ Hubbard, "Self-Government in a Reformatory," in *The Prison and the Prisoner, A Symposium* (Boston, 1917), pp. 106-114, Slade, "Books and Boys in Portsmouth Prison," *The Survey*, December 27, 1919, pp. 309-310

been attacked by many of the prison officials in various parts of the country. For the most part they believe that the plan is unworkable. Nevertheless it exists in a number of institutions in the country, being modified from time to time as experience dictates ways in which it can be improved.³¹

The following charges have been made against it.

(1) It lessens productivity.³²

(2) The organization is run by a certain few and apparently for selfish ends. Therefore, its influence is not for the benefit of the State or of the convicts in general.³³

(3) It was charged by certain parties soon after the establishment of the Welfare League at Sing Sing that there had been a great increase in stabbings in the institution. A study of the records in Sing Sing in the latter part of 1915 showed that this was untrue.³⁴

The claims made for self-government are numerous. The chief ones are as follows:

(1) The repressive influences which make men rebellious in prison have been supplanted by a system which puts responsibility upon the prisoners for the good conduct of the institution. After the Mutual Welfare League was established in Sing Sing a large number of guards within the prison were taken away, although there was an increase in the number of guards upon the wall.

(2) The number of escapes is greatly decreased under prison democracy. In the seven years prior to September 30, 1915, there had been an average of over nine escapes per year from Sing Sing. In 1915 there were only three. The reason for this is suggested by Mr. Osborne, who says: "When the first escape occurred after the new system went into operation the prisoners feared that their new privileges would be taken away. They considered that the prisoner who had escaped had 'double crossed his pals.'"³⁵

(3) Mr. Osborne claimed that production in the prison increased after the new system went into effect. For example, the number of shoes turned out increased from 37,600 in 1911 to 69,300 in 1915.³⁶

(4) The prisoner leaves the institution with an entirely different spirit than under the old system. While often under the latter he went out with

³¹ Lawes, *20,000 Years in Sing Sing* (New York, 1932), pp 112-125

³² *Twenty-seventh Annual Report for the Commission of Prisons* (New York, 1921), pp 73, 77, 79

³³ *Ibid.*, pp 72, 74

³⁴ Lane, "The Sing Sing Stabbings," *The Survey*, January 22, 1916, p 496

³⁵ Osborne, "Common Sense in Prison Management," *The City Club Bulletin* (Chicago), July 17, 1916, p 135

³⁶ *Ibid.*, p 135

a grouch against society, under the new system it was claimed he went out with the intention to make good. The attitude of some of these ex-convicts was shown at a meeting held in Carnegie Hall in New York City in the early part of 1916, at which a number of ex-convicts were present. The chairman was Dick Richards, an ex-convict who had spent twenty-seven years in various penal and correctional institutions, mostly penal. James Dale, another ex-convict who spoke of the influence of the Welfare League at Sing Sing, said that Warden Osborne did something for him that no institution, not even the whole State of New York, had done before—he had taught him.³⁷ Under the leadership of prison officials who believe in the system and possess discretion many men are greatly helped to take a new view of life and its responsibilities.

(5) By providing the opportunities for self-government the prison organized on the plan of prison democracy prepares a man for democratic control on the outside.³⁸

Properly organized, this method of discipline seems to have a good effect upon the prisoners psychologically. If the most intelligent and responsible prisoners are put in charge, they have a stake in the proper working of the system. It means an effort to develop self-control through community action. It bridges the chasm between the officials and the prisoners.³⁹

If the prison democracy is so organized as to do away with the evils cited, it may be a great relief to the warden and the other prison officials. Nevertheless experience indicates that it has to be carefully watched or prison politics will ruin it. There is still need for the wise official to guide the men who are actually running the organization.⁴⁰

Self-government has been introduced in some of the German prisons and in the Russian correctional institutions. In Germany before the revolution which introduced the Third Reich, especially in Bavaria, Saxony, and Thuringia, the highest grade (*Stufe*) of prisoners were permitted in some institutions to organize community activities in rooms set apart for that purpose. Dramatics, music such as orchestras and group singing, discussions, and

³⁷ *Prison Leaflets*, No. 33, National Committee on Prisons, New York, April, 1916, pp 2, 3.

³⁸ Tannenbaum, *Wall Shadows* (New York and London, 1922), pp 76-78.

³⁹ Tannenbaum, "Prison Democracy," *The Atlantic Monthly*, October, 1920, pp 433-434.

⁴⁰ Dorner, "The Prison Officer," in *The Prison and the Prisoner, A Symposium* (Boston, 1917), p 123. See also Lawes, *op cit*, pp 119-125, National Commission on Law Observance and Enforcement, No 9, *Report on Penal Institutions, Probation and Parole*, pp 122-126.

lectures were carried on by upper-grade prisoners themselves. What has happened to these activities since the Nazi revolution I do not know.

In Russia the prisoners are organized for self-government to a remarkable degree. It must be remembered, of course, that the governing group among the prisoners is for the most part a select group from the prisoners of worker or peasant origin. The prisoners have their meetings at which problems of prison administration are discussed, suggestions are made, and courts are held for the trial of prison offenders.⁴¹

WARDENS

The crucial point in any system of prison administration is the kind of warden at the head of the institution. He has a very difficult task. The position calls for qualities of the highest character, the greatest resourcefulness, a thorough understanding of criminal psychology and a faith in the possibility of turning some of these men from their evil ways to a normal social life. It also calls for first-rate business ability, because upon the warden's management depends the financial success of the prison. He must not be sentimental, but he must have a fine sense of justice.

Wherever prisons have been a success it has been because of extraordinary men at the head of them. This was true even in the earlier days of American prisons. The few wardens whose names stand out above the others in the history of American prisons are men of extraordinary personalities. Elam Lynds, with his belief that convicts could be governed only by stern authority and by severe repressive measures, was a man of clear mind and dominating personality. Of another type were the Pilsburys—Moses and Amos—of the Connecticut prison at Wethersfield, who had the combination of qualities to govern without severe measures and to produce good results. Sam Parsons and Mr. Morgan of Virginia are two other names which are noteworthy. Brockway, a student of Amos Pilsbury at the Connecticut State Prison and later manager of the Detroit House of Correction, became the first superintendent of Elmira Reformatory and one of the greatest practical administrators of reformatory institutions in the country until he retired near the close of the last century. De Beaumont and de Tocqueville noticed that even at the time of their visit to the United States in the early '30s the position of warden in the American prisons had attracted persons at once intellectual and respectable.⁴²

Unfortunately a similar list of worthies among prison administrators of

⁴¹ Gillin, "Russia's Criminal Court and Penal System," *Journal of Criminal Law and Criminology*, May-June, 1933, p. 309.

⁴² de Beaumont and de Tocqueville, *op. cit.*, pp. 28, 29, 81-82.

the more recent past is lacking. Interest in prison matters lapsed and good men were not attracted to positions in prison work. The newer reformatories drafted men like Brockway from the older institutions. Only since the beginning of this century has interest in prisons once more revived by reason of the work of a growing group of intelligent and earnest wardens, including Osborne, Kirchwey, Lee, and others. Once more the importance of proper administration of the prisons is commanding attention.

An ex-convict has expressed the matter so well that I cannot refrain from quoting him. He says:

"Some day the people will realize the fact that the man at the head of a State prison should be just as capable and efficient as a man at the head of a university, for every aspect of human life and character is contained within the four walls of the penitentiary. And some day it will not even be necessary to have walls of brick and stone at all. Paroled prisoners have no walls, yet 85 per cent of them are making good, circumscribed by moral walls which are just as effective as material walls."⁴³

As a matter of fact, however, it is unfortunately true that most of the wardens in the past have been selected from other considerations than the qualifications which have been mentioned.⁴⁴

INDIVIDUALIZATION OF TREATMENT

The big problem in discipline is to be able so to organize a prison that each man may be studied and treated according to his needs. With the limited appropriations for prison officials, the enormous number of men that had to be handled, and the multitudinous duties assigned each of the officials, about all that could be done was to make rules and see that they were enforced *en masse*. The possibility of individualization in our American prisons has always been remote, and with increasing numbers it has become largely impossible.⁴⁵

The men in charge have not the time or energy to devote themselves to the moral regeneration of those criminals who might be affected by personal contact with those in charge of them. Instead, the prison authorities have endeavored to reform them wholesale. That is impossible with delinquents, as has been shown by those institutions which have had such signal success in the reformation of young offenders. Wherever juvenile probation or a juvenile institution has been successful in correcting delinquents we find that

⁴³ Lowrie, *My Life in Prison* (New York, 1912), pp 420-421.

⁴⁴ Dorner, *op cit*, pp 117-118

⁴⁵ de Beaumont and de Tocqueville, *op cit*, p 102.

those in charge have had time to give individual attention to the offenders.⁴⁶ The numbers are too large in our prisons and in many of our reformatories to permit the proper attention to each individual. Many prison officials in Europe were astonished when I told them of the numbers to be found in some of our prisons. Furthermore, in the populous prisons it takes a very much more competent group of officials to keep order and to become acquainted personally with the men, to study them, and to adapt the treatment to each one than if the number is smaller. Since there are such great numbers in our prisons and the number of officials is few, it seems necessary, if the inmates of our prisons are to be socialized by their incarceration, that they should be so organized that the influence of the officials will penetrate throughout the prison itself so that the prisoners will help each other.⁴⁷

Furthermore, we must think of our prisons, in so far as we expect to turn their inmates back into society, as educational institutions. The whole purpose of the administration is to make them effective in rehabilitating men who have gone wrong. Naturally, in such a situation we must not have in the institution those who are not educable. Therefore, classification is necessary and out of the prisons considered as educational institutions must be taken those men who cannot be retrained. For them custodial institutions will have to be provided where they can be kept until death relieves society of their presence. Since most of the prisoners in any institution are not difficult to handle, segregation of the difficult prisoners from the others would permit a great relaxation of the rules and regulations governing the others. If, then, the most competent men could be placed in charge of these difficult prisoners, individualization of treatment might accomplish for them unexpected results.

QUESTIONS AND EXERCISES

1. What are the reasons back of the deprivation or limitation of mail privileges and visits from relatives and friends?
2. Suggest how a prison chaplain could be of real service to the inmates, in addition to his ordinary religious ministrations
3. What objectives should prison education have?
4. Name six books you would not place in a prison library. Why?
5. What newspapers and magazines would you not allow in a prison? Why?
6. If you were a warden of a prison, would you introduce self-government? Why?

⁴⁶ Drucker and Hexter, *Children Astray* (Boston, 1923).

⁴⁷ Tannenbaum, *Wall Shadows* (New York and London, 1922), pp. 42-43.

CHAPTER XXIV

RESULTS OF THE PRISON SYSTEM

LET us turn now to a frank examination of the results of the prison system. Changes looking to its improvement have been made during the 125 or more years of its history. Some of the most important of these changes we have discussed. It does succeed in keeping fairly securely those who are sent to it. In a certain per cent of the cases the inmates come out with a determination to live a new life. Possibly, also, fear of prison acts as a deterrent in some cases. Nevertheless, in spite of these improvements the impression is quite general that in many respects the prison fails. What are some of the charges against the prison system?

CHARGES AGAINST THE PRISON SYSTEM

1. It has been charged that the very structure of large numbers of our prisons is such that *physical degeneration* is inevitable. The cell houses in many of them are great aggregates of caves. Those who dwell in them might well be called "cave-dwellers." The cells are small: in most of the old prisons, seven feet by three or three and one half feet, and six and one half or seven feet high. The old prisons, built as they were of solid stone, had a tendency to gather upon their surfaces the moisture in the air. As a consequence, rheumatism and tuberculosis were very common. In most of our prisons the cell block does not permit of flooding the cells on one side with sunlight. Enlarged windows in the outside wall of the cell house and improved ventilation and sanitary systems have been installed in some of the older prisons and are characteristic of the newer. Nevertheless, in many of our older prisons the conditions in the building are very inimical to health.

Again, since so many of these men come into the prison physically diseased, it is important that the utmost care be taken in their close association that disease is not spread. In most of our prisons, however, elementary precautions against the spread of disease are lacking. The walls should be built of a material which provides a smooth surface so as not to catch dust and which can be rubbed off with a damp cloth saturated in an antiseptic solution. Ventilation and heating should be of such nature that a uniform

temperature is provided throughout the cell block and a goodly supply of fresh air is constantly introduced, while the vitiated air is carried off. Again, while it is well recognized that for men shut up in small cells sanitary conveniences are of the utmost importance to preserve health, some of our prisons still rely upon the old bucket system, which not only violates these fundamental principles of sanitation but corrupts the very atmosphere which the men breathe.

Finally, with so many of the men diseased when they come in and with the unusual health hazards incident to the particular structure and the poor sanitation and ventilation, it is important that the prison be equipped with a first-class hospital. In most of our prisons the hospital is unworthy of the name. It is small, poorly equipped, and manned by not the highest class of physicians and surgeons. Under such conditions it is inevitable that physical deterioration should result. Add to this the fact of individual isolation, with the lack of all the cheering surroundings which so intimately affect the health of human beings, and you have an institution which could hardly be better devised to ensure the physical deterioration of those who have not the toughest constitution. Promising beginnings have been made recently to remedy these defects.¹

2. Closely connected with these physical circumstances which affect the health of men is the *prison diet*. That nutrition has a great deal to do with both the health and the management of the inmate is recognized in some of our prisons and lies at the basis of the Borstal Reformatory system in use in England. When they enter prison, many prisoners are physically run down and nervously unstable. These conditions are accentuated by improper diet. This has been recognized in dealing with men on shipboard and in army camps. Insubordination, it has been discovered, is much less likely with men well fed upon properly balanced rations.

Recently an ex-convict has written me concerning this matter as follows:

"It happens that the Steward has more to do with the contentment of the men than any other individual. It is his duty to regulate the food supply, and he has the opportunity three times daily to bring content or discontent to the men. The men at W. were fed at a daily per capita of from Twelve to Thirteen Cents. Naturally, at this figure, there is a very slight margin between getting barely enough to eat and going hungry. Upon investigation we would probably find that more rioting has been caused in institutions from poor food than from any other reason."

¹ Rector, *Health and Medical Conditions in American Prisons* (New York, 1929), pp 29-101, National Commission on Law Observance and Enforcement, No 9, *Report on Penal Institutions, Probation and Parole*, pp 15-18

Here again, while much remains to be done in most prisons, very promising changes have occurred in a number. Not only is there the beginning of attention to scientific dietetics in the feeding of the prisoners, but a number of the newer institutions are experimenting with the cafeteria plan rather than the uniform meal.²

3. With this class of men, most of whom have lived an irregular sexual life before entrance and have loose moral ideals, there is bound to be a great deal of *immorality*, even under the best conditions. But closely confine such men and there is bound to be an enormous increase in vice. Wherever there is a community of men without families, whether it be in the prison, in the navy, or in barracks of the army, many "unnatural" acts manifest themselves.

Subject men to such conditions and if they have ever known the false solace of *drugs*, they crave them as never before. Consequently, the prison authorities are always engaged in a terrific struggle to control unnatural vice and the use of drugs. Oscar Wilde, the poet, who had some prison experience, has put this indictment in poetic form concerning Reading Gaol:

"The vilest deeds like poison weeds
Bloom well in prison-air
It is only what is good in Man
That wastes and withers there:
Pale Anguish keeps the heavy gate
And the Warder is Despair

.
"Each narrow cell in which we dwell
Is a foul and dark latrine,
And the fetid breath of living Death
Chokes up each grated screen,
And all, but Lust, is turned to dust
In Humanity's machine "

4. Except for a short time during the early history of the Auburn system, when very severe methods were used to increase efficiency in production, the prisons have been until recently *ill-organized and inefficient in their labor system*. There are lacking even the incentives of the outside world to honest labor. The listlessness and indifference are in striking contrast to the attitude in factories on the outside. In order to keep the men employed an extremely large number are assigned to every activity where it is possible. Recent prison labor legislation instigated by private employers and labor-unions has not helped the situation.

² Rector, *op. cit.*, pp. 110-136

5. It has been charged that *the enforcement of silence prevents the training of the inmates for social life and arouses intense antagonism*. Sociology has shown that speech is one of the most important achievements of humanity in the history of progress. Originating in the early days as a means to prevent the corruption of young criminals by the more hardened, the prohibition of conversation now serves chiefly as a provocative to violation of the rules with consequent punishment for a faculty which the men believe to be an inherent right, and an incitement to a spirit of revenge and hatefulness. As a matter of fact the rule of silence does not prevent communication by the prisoners. The old-line prison official believes that the rule of silence prevents quarreling and fights. However, it is a very serious question whether the repression of a natural instinct like talking with one's fellow-men does not do more harm than could be done through conversation. It is a splendid illustration of the attempt to prohibit a perfectly normal social function for a social purpose with the result that anti-social feelings and manifestations are produced. It has been said that half the punishments in some of our prisons are for violating the rule of silence, and yet, strangely enough, for this breach of discipline men are sent to the solitary, the only place in some prisons where they are free to talk to their fellows with impunity.³

6. The regular system of life in the prisons often leads to a maddening monotony. The same routine is gone through with day after day, month after month, and year after year. It is a well-known principle of psychology that one of the most fatiguing experiences of life is the monotony which comes from the repetition of a routine program. In many of our prisons there is practically nothing to break this monotony unless there is a fight or an outbreak against the prison authorities. Where this monotony has been broken up by recreation, education, and conversation under careful regulation, the strain of monotony seems to be somewhat relieved.

7. The *spy system* used in almost every prison defeats all the purposes of reformation. In practically every prison under the old repressive system, certain prisoners are picked out because of their compliance and subservience to the officials to serve as "stool-pigeons." They are given special privileges in return for which they report any plots or conspiracies to circumvent the prison officials. Furthermore, since the old repressive system fixes a wide gulf between the prison official and the prisoner, the former must have some means whereby he may know what is going on. The consequence is that the whole inmate body is shot through with suspicion; they do not know

³ Osborne, *Society and Prisons* (New Haven, 1916), p. 146

who are their friends and who may be informers. Furthermore, these stool-pigeons, since they have the ear of the officials, can become the most pernicious tyrants in the institution. They can take revenge upon any other prisoners by whispering in the ear of the official charges against a fellow-prisoner which are entirely untrue. These spies can even plant contraband articles or weapons in another inmate's cell without his knowledge and then report the matter to the official. While the man reported may be entirely innocent, he may suffer just as severely as though he were guilty.

8. In spite of the abolition of many types of severe punishment *brutality*, though often refined brutality, still reigns. Result: in such an unnatural state of living, with the tremendous repression of natural instincts and faculties, the nervous condition of many of the men becomes alarming. As we have seen, this false situation between inmate and official produces not only nervousness, fear and hatred in the man but in the official as well. There is no camaraderie between inmates and officials; the interests of the inmates are opposed to the interests of the officers, and there is a feeling of hatred for the prison authorities.

9. *Instead of preparing the inmate for a life of responsibility and initiative, the prison system thwarts him.* He is expected to do exactly as he is taught, without reasoning why or asking questions. How can any one develop highly socialized qualities when in the prison if he is never given an opportunity to exercise them? No wonder the men go out with whatever faculties they may have for self-control, initiative, and resourcefulness to meet the problems of life entirely undeveloped if not actually deadened. The theory of the prison system seems to be that the inmate will learn by habit to live a proper social life without any motives except those of fear of punishment to move him to a line of conduct. If that is the motive upon which we depend in our prisons for the development of the social qualities, how can we be surprised if large numbers of these men, kept in such institutions, find it impossible to order their conduct in accordance with the demands of a free society? It is like the theory once regnant in political science, that the way to train people for liberty was to oppress them and not allow them the exercise of political functions.⁴

10. *It fails in too large a number of cases to reform the inmates.* It has been estimated that nearly half the city criminals (46 per cent) show three or more previous convictions.⁵ In a study of fifty-three male convicts in the Illinois State Penitentiary at Joliet, thirty-one were recidivists.⁶

⁴ Osborne, *Society and Prisons*, pp 140-152

⁵ *Journal of Criminal Law and Criminology*, XI, 545 (February, 1921)

⁶ *Journal of Delinquency*, I, 13 (March, 1916).

In 1920, when the Wisconsin Mental Deficiency Survey studied the inmates of the State Prison, it was found that 45 per cent of the inmates were recidivists. In New York State in 1917, 60 per cent had served previous sentences; in Massachusetts 57.4 per cent were repeaters, and in West Virginia 51 per cent had been in prison before.⁷ In 1921, in the State Prison of Massachusetts a trifle over half (50.3 per cent) were recidivists.⁸ In other words, from 40 to 50 per cent of criminals, it has been estimated, are individuals with old prison records.⁹

In England in 1920 and 1921, 54.4 per cent of the male prisoners had been sentenced before.¹⁰ In Germany in 1929 29 per cent of the prisoners sentenced were recidivists.¹¹ It is quite possible, of course, that no institution could reform some of these men. In part they are the victims of their inheritance and of the vicious habits which they have acquired in a long experience of neglected childhood and youth. It is quite certain, however, that for many of them prison has confirmed them in their delinquent tendencies. As Dr. Healy has remarked, "If absolutely innocent individuals were put under prison conditions they would tend to develop anti-social conceptions of conduct."¹²

11. *In many cases it results in mental deterioration.* The prison system seems to develop *insanity* to an unusual degree. In English prisons the ratio of insanity among prisoners classified as mentally sound on reception is about three times that prevailing in the general population. Taking the convict prisons alone into consideration, the ratio is thirteen times as great as in the general population. Furthermore, the insanity rate seems to increase with the length of sentence in the English experience.

While these facts may be explained on the basis of the greater mental unsoundness of those who come into the prison as compared with the general population, a careful analysis of the figures seems to indicate that imprisonment itself "is in a large measure responsible for the development of insanity."¹³

12. *Prison life results in social deterioration.* After the first shock, when the ordinary prisoner, incarcerated for the first time, is reduced to a

⁷ *Wisconsin Mental Deficiency Survey* (Madison, 1920), p 2

⁸ Public Document No 115, Commonwealth of Massachusetts, *Annual Report of the Commissioner of Correction* (Boston, 1921), p 158

⁹ Anderson, *Journal of Social Forces*, January, 1923, p 93

¹⁰ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p 12.

¹¹ *Kriminalstatistik fur das Jahr 1929*, Statistik des Deutschen Reichs, Band 398 (Berlin, 1932), p 6

¹² Healy, *The Individual Delinquent* (Boston, 1915), p 315

¹³ Hobhouse and Brockway, *op cit*, pp 534-549

softened and responsive state of mind, open to either good or bad influences, the present prison system usually simply hardens him. In this state he needs sympathy and understanding and an endeavor to help him, but he finds brutality and harshness. Says one of the English prisoners.

"Just at a time when one is feeling crushed by a consciousness of guilt and weighed down by a sense of degradation, a stony-hearted, thick-headed warder comes along and, in threatening language, insists upon the strict observance of a set of childish regulations, which have no aim except to degrade the human into a beast. A few kind words, some consideration (not petting), some humanity, would often send prisoners back into the world enlightened, repentant, and well-intentioned, instead of unrepentant, revengeful, savage beasts of prey "¹⁴

The result is that the new prisoner finds comfort in the inmates of the prison. Say Hobhouse and Brockway:

"The criminal gregarious spirit is in part, at any rate, a measure of self-protection against the nervous disorders which would result from a literal obedience to the regulations prohibiting conversation and intercourse "¹⁵

The result of the whole prison situation is such an adaptation to the conditions as results in the formation of what is sometimes known as the criminal type of conduct. The experience of the prisoner upon release, with the mental habits formed in prison, often completes the confirmation of the prisoner in a life of crime. The result of the whole situation is that of the first offenders received at one English prison between 1900 and 1904 from 60 to 65 per cent returned to prison. With such a record the prison system cannot be called a success from the standpoint of reformation.

So far as the facts can be ascertained in America this indictment of the English prison system could be applied to some degree to the slightly different system in the United States.

13. *Suicide and Prisons.* In the English prisons the ratio of suicide in the prison population exceeds that in the general population by a greater difference than that between the ratio of prison insanity and the ratio of insanity outside. Goring's study of the English convict showed this clearly.¹⁶ Goring, as well as Hobhouse and Brockway, is of the opinion that the prison affords the environmental conditions which stimulate this aggravated tendency to self-murder.

The following case of a prison suicide described by an eye-witness, shows the significant factors in English prison life of that date which lead to suicide.

¹⁴ Hobhouse and Brockway, *op. cit.*, p 506

¹⁵ *Op. cit.*, p 507

¹⁶ *The English Convict. A Statistical Study* (London, 1913), p 556

"One afternoon I had occasion to take to the chief warden's office a petition to the Home Secretary, which I had been allowed to write during dinner-time. Owing to my landing officer being too busy to escort me, I went alone from B1 landing, on which I was located, to B2, and thence along to the 'centre,' where all the landings converge, and where, also, the chief warden's office is situated. As I was about to cross the 'centre,' suddenly I heard a sickening thud, and lying on the stone floor several yards before me was an elderly man. He had flung himself from the topmost landing of the prison. Before I had time to realise what had happened I was hurried away by our officer, who came apparently from nowhere.

"I was deeply impressed by this terrible incident and succeeded in obtaining a fairly comprehensive account from certain of the warders who were kindly disposed towards me.

"Taskmaster P—, of —— prison, was a hard, exacting officer—a man brutalised by the prison discipline which he administered. If a prisoner's task were not completed for what did not seem to him a satisfactory reason, he would threaten to report him for idleness, and would resort to all kinds of browbeating devices to frighten the spiritless prisoner into giving out more work when he came round to the cells every morning. It is believed that the prisoner S— had been bullied by the taskmaster P— for several days in succession. Certain it is that after listening to some threats about reporting to the governor for idleness, S— turned and struck the taskmaster to the ground. A scuffle followed, S— clutching the officer's throat, but soon the latter freed himself and hastily left the cell, slamming the door behind him, and leaving S— to realise the enormity of his crime.

"Violence to a warden meant the 'cat' (cat o' nine tails), that was certain. As his passion cooled he became more fully aware of his utter helplessness; and this made him desperate. He was an 'old hand' and had been in prison many times before. He had already served several weeks of his present sentence and was evidently in the throes of one of those uncontrollable fits of restlessness which periodically overcome prisoners and make them yearn to do anything violent to throw off the smothering cloak of monotonous discipline stifling them 24 hours each day. Passion exhausting itself and his restlessness subsiding, S— brooded over his forthcoming punishment. He knew what to expect—a long succession of days with nothing but bread and water in a cold, barren, stone cell, loss of privileges, letters, books, and moreover, the 'cat.'

"Dinner was served to S— at noon as usual, and at 1.30 p. m. the landing officer came to collect the dinner-tins. He evidently overlooked or knew nothing of prisoner S— being under report and, therefore, forbidden to leave his cell; or else, being in a hurry to finish collecting the dinner-tins and 'slopping,' he did not refuse permission when S— asked to be allowed to empty his slops. The prisoner hurried to the recess where the slops were emptied, and, watching his opportunity, swiftly ran up the adjacent stairs to the topmost landing, then

along the hall where the landing runs over the 'centre.' The landing here is covered with netting to prevent prisoners throwing themselves, or the warders, over the stone floor 30 feet below. With the frenzy of a hunted animal, S—— violently tore away the strong netting and iron-work and flung himself headlong over the railings

"He turned in mid-air and struck the ground with his back and head. Officers rushed from the chief warder's office and carried him away to an adjacent cell. Two days later he died "¹⁷

GOOD RESULTS

This survey seems to present a sad and hopeless picture. Are there no good results of the present prison system? What is the best that can be said of it? Are we so devoid of rationality that in spite of all these charges against a social institution we still retain it? No. There are some excuses for its continuance.

1. One of the foremost reasons for continuing the prison system is that *it is easy to operate*. The present prison system requires less trouble to us all than any other system so far suggested. A man menaces the welfare of ourselves or our property. Here is an institution to which we can send him and forget about him. For the time being we have eliminated him from society. The emotional stress to which he has subjected us has been relieved by a measure of revenge, and by getting rid of his presence. It is the simplest thing to do. While it costs society much money, and while it sends him back to society with seven other devils more wicked than himself to torment us again, for the moment it has satisfied us. It saves us the trouble of taking the slow and toilsome path of changing his habits by troublesome methods of individual regeneration, or of painfully changing the conditions which made him what he is. Since human beings try the seemingly easiest way until they find that experience shows that the apparently harder way leads to better results, we continue the prisons because we do not want to take the trouble of finding a better way. It accords with the inherent laziness of humanity. It is easy to operate.

2. Furthermore, *it secures the criminal*. We cling to this outgrown and discredited institution because we hug to our bosoms the false belief that by putting the man in prison we make ourselves secure. Perhaps that was once true, when there was neither pardon, parole, ending of sentence, or possibility of escape. To-day, while escape is not frequent, pardon is often exercised, parole is provided in some States for all prisoners, and for

¹⁷ Goring, *op. cit.*, pp. 556, 557.

almost 90 per cent the sentence is definite and ultimately comes to an end and the prisoner returns to society.¹⁸ We are secure for only a time. Nevertheless, since society lives more by its beliefs than by scientifically ascertained facts in these matters, we persist in the belief that we are secured by sending men to such institutions. Our beliefs send the man to prison, other beliefs we hold let him out. According to the former we think we secure our safety, and according to the latter we hold that he has been reformed and therefore he is no longer a menace. Both sets of beliefs are equally unfounded in careful study of the facts; they rest upon traditions asserted with authority and accepted without challenge by the most of us. The prison system demonstrates clearly the hold which tradition and custom has upon our social life.

3. *The prison system is improving.* In spite of the many charges against the prison system of to-day, there are certain promising happenings in connection with it. Once again, as in the early years and in the '70s of the last century, experimentation is going on. These various ventures in the attempt to make the prison system better suited to the task of preparing men for free society, while still halting and not employed at all in many States, nevertheless give promise of a new system of treating delinquents. Some of these experiments have been cited in the previous chapter. The silent system is slowly dying. Even within the last twenty years I have seen it entirely pass away in some prisons and being distinctly modified in others. The day is not far away when it will entirely disappear.

It is becoming recognized that it is possible to have institutions of varying security. No longer are they all of bastile-like appearance. Even within an old prison there is a tendency to take a considerable number of the inmates from within the walls and place them in prison camps or on public works in the open. Apart from this development, however, new institutions such as the one at Norfolk, Massachusetts, with its system of cottages adapted to differential treatment of the various groups, the wall-less intermediate prison at Argola, Missouri, the institutions near Hamburg, Germany, represented by that at Glasmere, and the Russian industrial and agricultural correctional colonies are attempts to treat the prisoners under less repressive discipline and with greater freedom.

Even within the prisons for most of the prisoners amelioration of conditions has been introduced through recreational plans, educational activities, and group work.

¹⁸ The average time served by life prisoners is said to be only seven and one half years.

WHY ARE WE NOT PROUD OF THE PRISON SYSTEM?

Nothing so plainly shows how little we have applied the findings of modern science to the problems of human behavior and the absence of the experimental method in dealing with our social misfits as the continuance of the prison system. What shall we do, then, with these men? That is the question with which every criticism of the prison is met. We continue the system because we have not seen that a portion of the prisoners need to be treated as defectives and mentally abnormal beings, other prisoners need to be treated as men who can be trained for useful life, and still others must be held for life as incorrigible criminals. We do not appreciate that we could stop the making of criminals if we attacked the conditions in the human stock and in the organization of social life which produce these anti-social personalities. Blind to the findings of science in psychology, economics, education, and sociology made in the last seventy-five years and unwilling to experiment in applying science to the handling of social problems, we do not see the substitutes which we could devise.

The results of our survey of the prison system both in this country and in England are not such as to make us enthusiastic concerning the system. If we are to succeed in turning back to society larger numbers of our prisoners, we must seriously modify it. It has been declared that the system must be destroyed. Certainly as it exists in many countries to-day it must go. In the light of the hopes of the early prison reformers it has miserably failed. In the face of the social progress of the last hundred years—the progress in educational methods, in knowledge of human psychology and social relations, in methods of teaching students in our schools, in methods of character formation in children, and in knowledge of the roots of social conduct—the prison system stands out as an anachronism and an abomination. The way we treat our criminals insults our social intelligence, outrages our humanitarian sentiments, challenges our religion, and flouts our advances in science and education. The prison stands as one of the most prominent survivals of cultural medievalism. We take pride in our science, in the socialization of our religion and our schools. Our economic progress, our material advancement, and our cultural development challenge the admiration of the world. Why are we not equally proud of our prisons? It is hopeful that, when the facts concerning them are laid bare to our eyes, we hang our heads in shame. Why do we not mention our prisons in the same breath with our hospitals? May we not hope that a people who have attacked the once seemingly impossible task of curing disease with so much success may yet find a solution for the vexed problem of so treating warped

lives that they shall find the joy of healthy social life? Perhaps when we bring to this problem the industry, the patient search for causative factors, and the ingenuity in adapting means to ends that characterize the history of medicine, we shall find a way to end this disgraceful institution, which more than any other illustrates not only "man's inhumanity to man" but also his indifference and ignorance. It is conceivable that we may learn in time to prevent crime and so come to the happy state where we shall not need correctional institutions. If so, they will vanish like such outworn devices as the bow and arrow, the breast-plate, and the stone hatchet. Until that time comes, we need to address ourselves so to modifying our methods of handling the delinquent that we may see more results for our trouble.

QUESTIONS AND EXERCISES

- 1 If the prison system were protecting society from criminals but not paying its way or reforming them, would it be socially justified? Why?
- 2 If it were reforming men but not paying its cost, would it be open to reasonable criticism? Why?
- 3 If the prison were turning back profits to the State, but were not reforming them and were turning them out again into society, would you criticize it? Why?
- 4 Suggest how the prison could be managed so that the present criticisms would not hold.

CHAPTER XXV

JAILS, WORKHOUSES, AND HOUSES OF CORRECTION

THE jail is the primordial penal institution out of which have grown prisons, penitentiaries, and reformatories, as well as houses of correction and other devices for the punishment or treatment of delinquents. It has not received the attention which its importance deserves. There are many more jails than all other penal institutions combined. Many more people experience them than all others. Yet it is the most neglected of our penal and correctional institutions.

How the Jails Arose. The origin of the jail is lost in the mists of antiquity. When first it appears it is an institution for the detention of those accused of crime or those awaiting execution. Only since the earlier methods of punishment—e.g., the stocks, the pillory, whipping, mutilation, beheading, etc.—were abolished has the jail become a place for the punishment of wrongdoers. When we first glimpse the jails in Europe they were attached to baronial castles, both clerical and secular. The Tower of London was used as a place of detention for political offenders until about 1715. Moreover, some of the king's courts, especially those at Westminster, as well as the clerical courts in different parts of England, had special places of detention.¹

The "common jail" seems to have existed in England as early as the sixteenth century. It has been estimated that then something like 200 such jails were in existence, maintained by many different authorities. In theory they were the property of the king, and county sheriffs, officers of the king, were in charge of them. Certain large towns had their own jails. As late as the eighteenth century private jails were to be found controlled by ecclesiastics, the lords of the manor, and other territorial dignitaries. In theory these as well as the others were the property of the king. Theoretically jails at that time were still places of detention only.

When first we catch a glimpse of them they are not supported by the public funds but are carried on as private profit-making concerns. In England they were farmed out to the jailers as late as 1730. The jailer made his money by fees which he charged the prisoner. Every thing he did from

¹ Webb, *English Prisons under Local Government* (London, 1922), pp. 1, 2.

turning the key to let in the arrested man to providing heat, bedding, and furniture, and even to turning the key to let him out, had a fee attached to it which the jailer pocketed. While this vicious system has gradually been displaced, it still survives in the sheriff's fees of our day and the fees for feeding the prisoners in the county jails still to be found in many States. In this situation the most terrible abuses arose. In fact, these were the abuses which led to John Howard's important work in prison reform.²

Origin in America. Like many others of our institutions county jails were brought to America by the colonists from England. In the colonies as soon as a community had developed to any size the need for some place to confine delinquents appeared. The colonial governments found it necessary to provide places of detention, which gradually, as in England, with the disappearance of the numerous other forms of punishment, became places of punishment by imprisonment. The Quakers in doing away with many of the old punishments found it necessary to provide a substitute. The jail or the workhouse became this substitute. As early as 1682 the Assembly of East Jersey provided that "in each county there small be a common gaol, which shall be for felons, vagrants, and idle persons, and safely to keep all persons committed to jail for debt before or after judgment."³ That there was a jail in Philadelphia as early as the Revolutionary War is indicated by the fact that the British in 1776 took possession of the local jail.

Klein says that in New York Colony there was no law providing for imprisonment as a punishment before 1664. For the next century there are found only four such laws. The first general law in New York designating prisons as places of punishment was enacted in 1788 and applied only to minor offenses. In the early period of that State the jail was used only as a place for the detention of persons awaiting trial or for imprisonment for debt.⁴ With the growth of population in other parts of the country the jail was established and in the larger centers became a large institution holding an indiscriminate mob of misdemeanants, felons, debtors, and persons awaiting trial.⁵

These became dens of iniquity, the evils of which led to early efforts at prison reform. It was out of the Walnut Street jail in Philadelphia that the Eastern Penitentiary of Pennsylvania developed, and out of the Newgate jail in New York City came the Auburn State Prison of New York.

² Webb, *op. cit.*, pp. 3-12.

³ Lewis, *Development of American Prisons and Prison Customs, 1776-1845* (Albany, 1922), p. 271.

⁴ Klein, *Prison Methods in New York State* (New York, 1920), pp. 25, 26.

⁵ Lewis, *op. cit.*, p. 271.

The County Penitentiary. De Beaumont and de Tocqueville, recognizing the efforts of some of the States to introduce the penitentiary system, i.e., a system of prisons intended to reform the inmates, stated (1833) that so far as the American jails were concerned, no progress had been made.⁶ In New York State, where the county jails had been used chiefly for the detention of persons awaiting trial, for the punishment of minor offenders, and for debtors, they had become overcrowded "The logical solution was to build larger institutions and to separate the functions of the county jail by sending to these newer and bigger institutions prisoners serving sentence, and retaining the county jails as houses of detention only."⁷ Thus arose a new kind of institution, the county penitentiary, and the first of these was built in 1846. The county penitentiary seems to have developed out of the suggestion of the New York Prison Association that "district work-houses" be erected to take care of those sentenced for crime, who had been sent hitherto to the county jail.⁸

With a few sporadic exceptions here and there, county penitentiaries, even where they existed, degenerated into mere prisons for short-term convicts.⁹ The reformatory ideal for misdemeanants has found fruitage chiefly in the State farm for misdemeanants in Indiana.

Development of the County Jail. In addition to these early attempts to reform the jail certain other developments have taken place in the course of a century. Among these must be noted the attempt to segregate within the jail those detained awaiting trial, juveniles, women, and to a slight extent the younger adults—attempts for the most part sporadic.

Furthermore, in most of the States idleness in the jails became a serious problem. The good-roads movement developed in the latter part of that period. Consequently by 1923 every State in the Union had on its statute books laws providing for working county prisoners on the roads. However, it became a widespread practice only in the South.¹⁰ The result has been that chain- or road-gangs were taken out of the jails and put to work on the streets or leased out to private parties. Even as late as 1922 the census reported the situation in the following table:¹¹

⁶ de Beaumont and de Tocqueville, *The Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp 13-15, 19

⁷ Klein, *op cit*, p 41

⁸ *Ibid*, pp 41, 42

⁹ Brockway, *Fifty Years of Prison Service* (New York, 1912), p 49

¹⁰ Steiner and Brown, *The North Carolina Chain Gang* (Chapel Hill, N. C., 1927), pp 3, 4

¹¹ "Table 7—Prisoners in Chain or Road Gangs in 'Other' Institutions Distributed According to Sex, by Divisions and States, July 1, 1922," *Number of Prisoners in Penal Institutions, 1922 and 1917* (Department of Commerce, Bureau of the Census, Washington, 1923), p 19

CHAIN- OR ROAD-GANGS

SECTION	NUMBER OF GANGS REPORTING	NUMBER OF PRISONERS		
		Total	Male	Female
SOUTH ATLANTIC	230	10,819	10,450	369
North Carolina	51	2,247	2,242	5
South Carolina	44	1,527	1,527	...
Georgia	100	6,191 *	5,849	342 *
Florida	35	854	832	22
EAST SOUTH CENTRAL	40	1,679	1,556	123
Tennessee	13	639	587	52
Alabama	15	832	766	66
Mississippi	12	208	203	5
WEST SOUTH CENTRAL	26	219	216	3
Arkansas	2	18	18	...
Louisiana	8	66	64	2
Texas	16	135	134	1

* Includes 394 males and 193 females on Georgia State Prison Farm operated in connection with chain- or road-gangs

In a less degree than in the case of the prison, attempts have been made to develop farms and some industries in the jails of some of the larger places to relieve idleness.

NUMBER AND FUNCTION OF JAILS

Number of Jails. There are over 3,500 jails in the United States. About four fifths of these are county jails or workhouses, chain-gangs, and stockades, while the remainder are municipal jails and workhouses.¹² In addition there are a large number of lock-ups and police stations where arrested persons are detained. Probably it is not outside the truth to say that there are 10,000 jails, lock-ups, and police stations in this country.¹³

Who Is Sent to the Jail? Of the persons committed to penal institutions in the United States in the first six months of 1933, 81 per cent were sent to jails and workhouses. Of this number 94.8 per cent were committed

¹² *Prisoners 1923* (Bureau of the Census, Washington, 1926), p 3, Bureau of the Census, newspaper release for September 11, 1934

¹³ *Literary Digest*, August 11, 1923, p 34, *Hait, "Police Jails and Village Lockups,"* National Commission on Law Observance and Enforcement, No 9, *Report on Penal Institutions, Probation and Police*, pp 327 ff

for less than one year. If, then, the jail is the institution with which more men are acquainted than any other, should we not be concerned that its influence be wholesome rather than baleful?

Of those sent to jails and workhouses in the first six months of 1933, 31.4 per cent were committed for non-payment of fine. In short, almost one third of the inmates were *prisoners for debt* to the court.¹⁴

What is the age, offense, and sex of the jail inmates? In the first half of 1933, of those committed to jails and workhouses in the United States 10.7 per cent were under twenty-one years of age. In the same period, of those committed to the jails and workhouses of the United States about 73 per cent of the inmates were charged chiefly with vagrancy, disorderly conduct and drunkenness, larceny, including auto theft and stolen property, violation of liquor laws, violation of traffic and motor vehicle laws, and assault. Women constituted only about 7 per cent of those committed to jails and workhouses. A large per cent of those committed to the jails and workhouses were repeaters (58.5 per cent).¹⁵ Already demoralized after one or two such sentences, they are evil influences on the young first offender and foci of corruption to all with whom they meet.¹⁶ In spite of the fact that commitment to jail has had no deterrent effect on them, the law sends them back again and again with no result but further demoralization to themselves and corruption of others.¹⁷

What was the mental condition of the jail inmates? In Wisconsin in 1920 55.4 per cent were normal, 16.4 per cent feeble-minded, and 15.2 per cent psychopathic.¹⁸

The general picture, then, of the population of a jail indicates *its actual functions*. The jail can be described as an institution in American life which functions chiefly as (1) *a place of detention for those awaiting trial*, (2) *a place of punishment for those who have been sentenced to a fine and are unable to pay*, and (3) *a place for the punishment of minor offenders for whom no other place is provided*. It is clear that as long as these various functions are provided for in the same institution, usually a small one, proper segregation cannot take place. It is impossible for the jail properly to

¹⁴ In some places the proportion is much greater. See Stern, "Imprisonment for the Non-Payment of Fines in Chicago," *The Social Service Review*, September, 1931, pp. 459 ff. In 1933 for the whole United States the proportion had fallen from half of the commitments to less than a third sent to jail for non-payment of fine.

¹⁵ For all the above figures the source was a Bureau of the Census newspaper release, "Prisoners in County and Municipal Penal Institutions," September 11, 1934.

¹⁶ Hoffer, Mann, and House, *The Jails of Virginia* (New York, 1933), pp. 5, 140.

¹⁷ *Ibid.*, pp. 363-365.

¹⁸ *Wisconsin Mental Deficiency Survey* (Madison, Wis., 1920), p. 17.

discharge its three distinctive functions. It is imperative, therefore, if injustice is not to be done, that *the jail should be a place of detention only.*

FAILURE OF THE JAIL

Certain evils of jails in the early days have been referred to in the chapter on prisons. The reports of several early organizations reveal the jail conditions of that period. For example, the Boston Prison Discipline Society, organized in 1825, called attention in its first annual report to the terrible conditions in county jails.¹⁹ It was pointed out that the jails south of the Potomac were destitute of courtyards, had windows on the street, and were so insecure that from one jail in Virginia all the prisoners made their escape in the winter of 1824 and 1825. In some of the Northern States Dr Dwight, the secretary of the Society, found cells or rooms without windows and others in which the only ventilation was through cracks in the door. They were over-crowded and in many of them the only means of communicating with prisoners was through holes in the cell door. Into the same jail were crowded convicted persons and those awaiting trial. He describes having found in one jail a large cell in which a Negro was confined naked with eleven other prisoners. In many of the jails no clothing was furnished. In 1826 a representative in Congress described the jail in the District of Columbia as follows:

"The building is divided by a passage from one end to the other on each side of which are eight cells. In these 16 cells the marshal has frequently been compelled to confine 70 or sometimes 80 individuals, among them innocent individuals against which no bill was afterwards found; and these imprisoned not for an hour, but for months."

He continues that in one of these cells he found confined seven persons consisting of three women and four children almost naked, one of them sick, lying on the damp floor without bed, pillow, or covering. The others were provided with none of the most common necessities of life and were compelled to sleep on the damp floor without any covering but a few dirty blankets.²⁰

Young boys were found in many of these jails, some of them under twelve years of age, in the following proportions of those under twenty-one to older adults: Maine and New Hampshire, 1 to 5; Connecticut, 1 to 3; Vermont and Virginia, 1 to 7, Auburn, New York, 1 to 6. In some of these jails jail fever was common. So terrible were the conditions in the Bridewell

¹⁹ Lewis, *op. cit.*, p. 272.

²⁰ Quoted in Lewis, *op. cit.*, p. 272.

of New York City that Dr. Dwight was warned that it would not be safe to risk his life even for a few moments in the room in which most of the persons were committed. He says that at one time the Bridewell contained ninety persons in a common mass of drunkenness, lasciviousness, obscenity, madness, filth, lunacy, and fever. In the Philadelphia County jail the deaths in the female department in the year previous to his appointment had been one fourth of the total inmates. From three fourths to nine tenths of the commitments to these institutions were for intemperance. Recidivism was rife.²¹

The jails were manned by petty politicians, and in the endeavor to hand around the office of sheriff as widely as possible most of the States had provided that a sheriff might not succeed himself. Hence there was no continuity of service, with the result that there was no possible development of skill in dealing with these hopeless cases. There was lack of cleanliness, and the institution swarmed with vermin. There were no matrons to look after the female prisoners, and the crowding was beyond all reason. Great numbers were thrust into jail, held for a time, and let out without trial. Indiscriminately mingled among the convicts and those awaiting trial were debtors and insane persons. In 1826 Dr. Dwight estimated that there were thirty lunatics in the county jails of one State. He found one in a cell where he had been for nine years, clothed, as he describes it, with a "wreath of rags" and another wreath of tattered garments about his neck. No bed, chair, or bench was in the cell, and he slept upon two or three rough planks or upon a heap of filthy straw in a corner. Another he found had left his room only twice in eight years. The door had not been opened in eighteen months. The filth in which he lived was indescribable.

Ninety years later, reports concerning county jails had a significantly similar sound. Thus in Illinois in 1916 the *Institution Quarterly*, the official organ of the public charity service of Illinois, after describing the attempts of the legislature to improve the jails of that State, described the jails and jail system as a disgrace to humanity and civilization and charged that they were a powerful factor in the promotion of crime and degeneracy; that they were plague centers, and that men who passed through them left them with a contempt and hatred for the law which led them to even greater crimes. The report showed how the legal provisions for sanitary improvements and for separation of different classes of prisoners had been ignored and stated that not one fifth of the county jails of that State conformed to the provisions of the State law; that many of them were operated with

²¹ Lewis, *op. cit.*, p. 273

more violations of the law than had been committed by all the prisoners at that time confined in them. Speaking of the southern counties of the State this report said:

"Here we find the metal laundry tub with all its horrors. This tub is the only bathing convenience provided. In it men wash their bodies and their clothes. Sick men and healthy men bathe in it. Sometimes twenty men must use this one tub. The water must be carried to it for there is no water and sewage pipes in the jail. The bathwater must be heated on the jail stove. The common towel may be in use or three or four men may share one towel. The towels are washed, if washed at all, by the men."

This report stated that in Chicago were found the worst jails in the State. Of the forty-six jails of Chicago only about a dozen were fit for use. Of the police jails the report said:

"These persons are declared by the law to be presumably innocent and they are herded together in vile cells exposed to every kind of moral and physical contagion. They are held in idleness. The first offenders are in cells with hardened criminals, boys are with old men, the girl witness may be in the same cell with the drunken woman of the streets; the runaway boy may be imprisoned with a sexual pervert; the physically clean are compelled to use the same tubs, often the same towels and drinking cups that are used by those suffering from the most loathsome communicable diseases. They may also use the same beds and bedding. Light and air are denied admission but vermin, rats, and seepage enter without difficulty."²²

Since that time some of these conditions have been changed for the better. Cook County has built one of the finest county jails in the country. That Illinois was not a sinner above many others is testified to by reports from many other States. Even from Pennsylvania came the report by the secretary of the Pennsylvania Prison Society, which for over 100 years had been working for the improvement of prisons in that State, that the conditions in the York County jail in 1919 were such that writers who had described it "condemn with severity the administrative policy" and "reproach the management with entire lack of humanity in continuing practices which are infamous, brutalizing, and scandalous." They added that all this denunciation had appeared to have little effect. While this was an exceptional case in

²² *The Institution Quarterly, Illinois*, VII, 11, 12 (March 31, 1916). See also Kirchwey, *Reports Comprising the Survey of the Cook County Jail* (The Chicago Community Trust, Chicago, 1922); Loomis, "A Jail for More Than Custody," *The Survey*, April 15, 1929.

the county prisons of Pennsylvania, the detailed report on each county jail by the secretary of the Prison Discipline Society show that in many of them the conditions were very bad.²³

In 1912 a committee of which the chairman was the Attorney-General of the State reported at the request of the Governor on the jail system of Iowa. This report said.

"Our jail system is a disgrace to the state and except as a place of detention for persons awaiting trial there is not a single excuse or justification for its existence"²⁴

The committee added that in the jails of Iowa not a person committed to the county jails as a punishment for crime was engaged in any productive labor; that in a large number of the city and county jails in that State unsanitary conditions prevailed. They reported finding jails small, poor, and dirty, one in a basement and consequently very damp, in another there was no separate apartment for women and no means of segregating first offenders from the most hardened criminals; there were bad sewage conditions; in one county the sheriff permitted prisoners to go outside the prison walls for liquor and to become intoxicated, the sheriffs in some cases were guilty of intoxication, gambling, and visiting assignation houses, and of allowing unspeakable moral conditions to exist in their jails.²⁵ Similar reports have come from all parts of the country.²⁶

These descriptions are not from the pens of sensational journalists but from official reports. They did not then and do not now fit all the jails in

²³ Votaw, "Review of the County Jails in Pennsylvania," Prologue to No. 59 of *The Journal of Prison Discipline and Philanthropy* (1920), p. 50, and detailed reports of each of the county institutions in the publication, *Report of the Legislative Commission on Jails* (State of Connecticut, May 5, 1932).

²⁴ *A Report Concerning the Jail System of Iowa, with Recommendations*, Department of Justice, State of Iowa, Des Moines, 1912, p. 79.

²⁵ *Ibid.*, pp. 81-84.

²⁶ For details in other parts of the country see Queen, *op. cit.*, pp. 16, 17, Fishman, *Crucibles of Crime*, Chaps. 2-4; Fishman, "The American Jail," *Atlantic Monthly*, December, 1922, "Jails in Georgia," *The Survey*, June 15, 1924, Riley, *Survey of Florida County Jails* (Russell Sage Foundation, New York, March, 1922), Whitney, "The Alameda County Jail," *The Survey*, December 23, 1920, p. 452, "Our Illinois Jails," *The City Club Bulletin*, Chicago, January 29, 1917, p. 34 ff., Falconer, *The Jail as a Perveiler of Womanhood* (Russell Sage Foundation, New York, March, 1922), Hart, *County Jails*, Prison Leaflets No. 40, National Committee on Prisons and Prison Labor (New York, 1917), Ellwood, *A Bulletin on the Condition of the County Jails of Missouri* (University of Missouri, June, 1904), *Penal Affairs* (Pennsylvania Committee on Penal Affairs, May, 1926), Lowden, Robinson, and others, *Propagating Crime through the Jail and Other Institutions for Short-Term Offenders*, a report submitted to the National Crime Commission (no date), Robinson, "New Developments in Jails," *Proceedings, American Prison Association*, 1933, pp. 90 ff.

the United States, but they are still true of enough of them to show that American society has failed to reform this ancient institution. Let us now turn to specific aspects of failure.

Jails as Disease Breeders. The lack of proper light and air, the unsanitary conditions prevailing in most jails, the common bathing tub—where one of any sort has been provided—the use of the common towel and drinking cup, and the presence in jails of many diseased prisoners all conduce to spread disease in these institutions. Of 152 persons examined in ten jails in Michigan some years ago, 27.6 per cent had active cases of tuberculosis or were suspected of having the disease or had had the disease and arrested it. This was much higher than the per cent in the general population. It contrasts with 3.4 per cent of 1,971 men examined in the three State penitentiaries of the same State. Since the jail population changes frequently, these persons are a menace to the people outside. They are just the kind of people who are not likely to take pains to protect others against themselves.²⁷

The State Inspector of Jails in Alabama pointed out that a lack of occupation, no exercise, inadequate supply of wholesome food of sufficient variety, insufficient air, and deprivation of sunlight and outdoor life were putting the men in the jails in that State at the mercy of tuberculosis and other communicable diseases. Since 71,000 persons were released in a three-year period from the jails of Alabama, it is clear that in these jails lay a potent factor in the dissemination of the white plague.²⁸

In practically every State a large proportion of the jails are so lacking in the fundamental decencies that they can be described as disgraces to our civilization.

Said a jail inspector for the Federal Government concerning the jails he had visited in the United States:

"If the facts were known, in most instances the sentence would actually read: 'I not only sentence you to confinement for thirty days in a bare, narrow cell in a gloomy building, during which time you will be deprived of your family, friends, occupation, earning power, and all other human liberties and privileges, but in addition, I sentence you to a putrid mire, demoralizing to body, mind, and soul, where every rule of civilization is violated, where you are given every opportunity to deteriorate, but none to improve, and where your tendency to wrong-doing cannot be corrected, but only aggravated'"²⁹

²⁷ "Tuberculosis in Michigan Jails," *The Survey*, January 27, 1917

²⁸ "County Jails Contrasted in Two States," *The Survey*, June 16, 1917, p. 262.

²⁹ Fishman, "The American Jail," *Atlantic Monthly*, December, 1922, p. 793

Said an inmate of a California jail:

"After each meal we washed our dishes in water drawn from the bathtub that might be hot or lukewarm, and without any thought of disinfecting. Any washing of clothes or dish towels had to be done in the same little galvanized tub without any opportunity for boiling. This and the bathtub used in common had mental disadvantages to a social worker, for among social workers such methods have been regarded as a menace these many years."³⁰

A report on the Florida jails in 1922 said:

"Prisoners are not forced to take a bath, only 8 counties of the 30 furnish prisoners with any underclothing; and in a great majority of cases prisoners have to do the washing. It is said that at Marianna the blankets are never washed, and clothing is never furnished to prisoners. At Starke blankets are washed twice a year, at Brooksville, only once a year . . . In fact, only 13 jails studied supply sheets, and most of the blankets are washed, 'when needed,' by the prisoners, together with their clothes. This work, in the majority of cases, is done in the bath-tubs, except at Brooksville, Crestview, and Ocala, where they send the soiled bedclothes and clothing to the laundry once a week. In a large number of places mattresses are seldom, if ever, washed or renewed."³¹

Mrs Maitha Falconer says of the jails:

"Many of the jails are in unsanitary condition; often filthy and infested with vermin . . . In this workhouse, where men and women were sent from the city court, the women's quarters were filthy—not fit for any one to live in."³²

Every investigation made in recent years shows many jails which are incubators and spreaders of disease.

The Fee System. Another vicious characteristic of the modern jail is the fee system. This is a direct survival from the days of John Howard when the jails were the property of private individuals or, if they belonged to a county or municipality, the only pay the jailer got was from the fees which he was permitted to charge. Most of the old service fees have been abolished. The chief remnant of the fee system is to be found in the fees paid for the feeding of prisoners, although in twenty-four counties of Penn-

³⁰ Whitney, "The Alameda County Jail," *The Survey*, December 25, 1920, p. 453.

³¹ Riley, *Survey of Florida County Jails* (Russell Sage Foundation, New York, March, 1922), pp. 3, 4.

³² Falconer, *The Jail as a Perverter of Womanhood* (Russell Sage Foundation, New York, March, 1922), pp. 3, 4. See also Lowden, Robinson, and others, *Propagating Crime through the Jail and Other Institutions for Short-Term Offenders. A Report submitted to the National Crime Commission by the Sub-Committee on Pardons, Parole, Probation, Penal Laws and Institutional Correction* (distributed by the Russell Sage Foundation, New York, no date), Hoffer, Mann, and House, *op. cit.*, Chap. VI.

sylvania in 1912 every time the sheriff opened the jail door he received a fee of from twenty-five to fifty-six cents. In 1918 in fifty-one out of sixty-seven counties in Pennsylvania the fee system of feeding prisoners remained. Under this system the county allowed the sheriff from twenty to fifty cents per day for each prisoner. The average in the fifty-one counties was forty-two cents. Whatever the sheriff can save out of this amount is his. How much this petty graft at the expense of those detained in jail amounts to can only be estimated by comparison of the cost in those counties that had the fee system with the cost in those which did not. In the sixteen counties which did not have the fee system in 1918 the maximum cost was twenty-four cents per prisoner per day and the average thirteen and one half cents. It would seem, therefore, other things being equal, that on the average the fee-paid sheriffs made a profit of twenty-eight and one half cents per day on each prisoner, or for every cent the fee-paid sheriff spent on food for the prisoner he put three cents into his own pocket. It has been estimated that the sixteen counties with a total of 1,600 prisoners paid \$20,000 a year less than it cost the fifty-one counties under the fee system, with only 766 prisoners.³³ Moreover, the fee system means poorer food for the prisoner.³⁴ This system still prevails in many States³⁵

Imprisonment for Debt. Almost one third of the inmates of the jails are those who have been sentenced to jail because of inability to pay a fine. What a travesty upon our boasted abolition of imprisonment for debt when we still imprison over one sixth of a million people every year because they cannot pay what they owe to the court!

To solve this problem a number of States have enacted laws providing for the payment of fines on the instalment plan except in the cases in which it is believed the convicted person would default, with the result that from 1923 to 1933 the per cent committed for non-payment of fine was cut from one half to less than a third. Under this system these who would otherwise be jail prisoners supported at the expense of the taxpayers are enabled to support their families, pay the fine, and relieve the taxpayers of their support.

Jails Are Costly. There are over 3,000 county jails in the United States. In each of these institutions is invested a considerable sum of money. Each of them has officials who are paid salaries, in each of them two or three times a day a given number of people must be fed. In most of them the inmates make no return by productive labor. No one knows how much

³³ "The High Cost of County Jail Fees," *The Survey*, January 12, 1915, p. 423

³⁴ Votaw, *op. cit.*, pp. 4, 5

³⁵ For the working of the fee system in Virginia see Hoffer, Mann, and House, *op. cit.*, Chap. VII.

these jails cost the taxpayers of the United States. From what can be gathered from a few States, it must amount to an enormous sum. During the year ending May 1, 1922, in Wisconsin the jails cost the taxpayers of that state \$489,417.52 for operation. In Virginia in 1915 there was an aggregate of 26,384 prisoners costing the taxpayers a total of \$397,883.51.³⁶

Jails Are Places of Idleness. It has long been recognized that labor is of the greatest importance for physical, mental, and moral health. Most of the jails in the United States, however, provide very little or no labor for the inmates. The problem of labor in the jails has been a vexing one from the very beginning. In 1914 in Pennsylvania it was estimated that more than one million days were wasted in idleness in the county jails of that State. While probation had greatly decreased the jail population of the State, yet in 1920 the waste still amounted to from six to seven hundred thousand days annually.³⁷

To obviate this difficulty in some of the larger cities the jail has introduced contract labor. In 1917 it was discovered that the county jail at New Haven, Connecticut, had contracted the services of 200 men to private manufacturers at about ten cents a day each. The county provided heat, light, power, and rent as well as depreciation of plant. Moreover, the county handed over the discipline as well as the employment of these prisoners to the private contractors.³⁸ How widely this practice extends in the larger jails of the United States it is impossible with our present information to say. Bad as it is, however, it is less of an evil than leaving the men in absolute idleness, a condition which prevails in most jails. Mr. Fishman has said that the great curse of jails is not the bad sanitary conditions, but idleness. Even in States like Michigan and Wisconsin which have made some efforts to improve the jails, idleness is the prevailing condition. Concerning the Cook County jail at Chicago, one observer said:

"At a conservative estimate, the value of the labor here wasted is, perhaps, between one-half million and a million a year. But economic loss through the mental, moral, and physical stagnation of the prisoners cannot be counted in dollars. It is incalculable. To look into these corridors and see the hundreds of well-set-up and able-bodied men lolling around doing nothing except exchanging

³⁶ *Mental Defectives in Virginia* (State Board of Charities, Richmond, Va., 1915), p. 69.

³⁷ Votaw, *Review of the County Jails in Pennsylvania*, issued as a Prologue to No. 59 of *The Journal of Prison Discipline and Philanthropy*, May, 1920, p. 7.

³⁸ Hart, *County Jails*, Prison Leaflets No. 40, National Committee on Prisons and Prison Labor (New York, 1917), pp. 11-13.

stimulating details of criminal adventures and becoming more proficient in crime is enough to make one despair of any solution of the criminal problem while idleness continues.”³⁹

They Promote Demoralization. In most of the jails there is no attempt at classification of the inmates except on the basis of sex and in some on the basis of age. In many of the jails children may still be confined. In a recent study of the jails of North Carolina it was found that in one jail an eleven-year-old white boy was confined for about six weeks for breaking a window-pane and a lamp-shade in the county home.⁴⁰

In 1922 the Jail Survey of the jails of Cook County found that 20.8 per cent of those confined were twenty-one years of age.⁴¹ In 1923 of those committed to jails and workhouses in the United States 9.6 per cent were under twenty-one years of age.⁴² In 1920 in New York State fourteen jails reported that they had detained children in them at some time during the year, although the practice is rapidly dying out in that State, as shown by the fact that the number of jails holding children declined from sixty-six in 1905 to fourteen in 1920, and the number of children detained from 1,218 in 1905 to 121 in 1920.⁴³ In many States this evil practice is decreasing owing to “the awakening on the part of the public and the committing magistrates to the injustice to the individual child and the danger to the state which may result from placing upon a boy or girl the stigma of having been confined in jail.” Detention homes for the temporary commitment of juveniles, “boarding out” children awaiting court action, and release to parents or probation officer while awaiting trial are methods supplanting commitment to jail.⁴⁴ In South Carolina the secretary of the State Board of Charities and Correction in 1919 reported that he saw eight or ten adult Negro men, one white woman, a Negro girl, and a little Negro boy about twelve years of age all in one room grouped about the only fire in the building. He reports also that he has seen numbers of jails containing adults and juveniles

³⁹ Fishman, “The American Jail,” *Atlantic Monthly*, December, 1922, pp. 801, 802. For a more recent study depicting much the same conditions see Hoffer, Mann, and House, *op. cit.*, p. 139.

⁴⁰ Bulletin, *North Carolina State Board of Charities and Public Welfare*, Vol. VI, No. 1, p. 8.

⁴¹ Kirchwey, *Reports Comprising the Survey of the Cook County Jail* (The Chicago Community Trust, 1922), p. 25.

⁴² *Prisoners: 1923*, Bureau of the Census (Washington, 1926), p. 78.

⁴³ *The Survey*, November 19, 1921, p. 279.

⁴⁴ “Child Welfare Notes,” *The Survey*, November 19, 1921, p. 279.

together in the same room, in some cases even in those jails which had entirely separate quarters provided for boys.⁴⁵

Insane people are still confined in some county jails. In Indiana, for example, in 1919 insane inmates were found in twenty of the jails of that State.⁴⁶

Young and old, debauched and unsophisticated, diseased and healthy, sane and insane, the criminal long experienced in all the arts of crime and the young man detained for trial and having his first experience with the jail are all flung in together. The abandoned and diseased street-walker is in the same place as the young girl who has come into conflict with the law for the first time. Consider the situation, then, with idleness and nothing to occupy the time except conversation! No wonder the jails have been called "schools of crime."⁴⁷

Lack of Discipline. The ordinary sheriff conceives it to be his business to keep the men in jail. Unless there is a fight or other disturbance they do much as they please. Out of the lack of discipline by the jail authorities there has developed an institution known as the "kangaroo court," which is a form of petty graft and a method of discipline conducted by the prisoners themselves. It has in it an idea which might be used to some good effect, but under the natural leadership developed in a group within the jail, it is quite likely to be a petty tyranny. This court acts as a means of extorting from newcomers money with which to buy food and luxuries not furnished them by the jail authorities and as a method of self-government.⁴⁸

On the whole, it must be said that there is very little, if any, wholesome discipline in a jail. Most jailers are incompetent to exercise any constructive social influence over the inmates; those who are competent soon come to feel that the task is hopeless because of the shortness of the sentence or the depraved character of the inmates. Discipline of a constructive nature is

⁴⁵ Quoted in Hart, *Report of the Committee on Treatment of Persons Waiting Court Action and Misdemeanant Prisoners* (Russell Sage Foundation, New York, March, 1922), pp. 13-16.

⁴⁶ *Thirty-second Annual Report of the Board of State Charities of Indiana for the Fiscal Year Ending September 30, 1921*, p. 140.

⁴⁷ Minei, *The Individual Method of Dealing with Girls and Women Awaiting Court Action* (Russell Sage Foundation, New York, March, 1922), Chap. 49, pp. 8, 9.

⁴⁸ Akers, "Fish! Fish!" *The Survey*, October 1, 1923, pp. 29-32. The Board of State Charities of Indiana in a recent report condemns the kangaroo court in the jails of that State as follows: "From time to time we have learned of the practice of Kangaroo courts. This practice cannot be too severely condemned. The sheriff who permits it admits his inability to govern his prisoners. The practice can only lead to injustices, abuses and vice. The experienced prisoners prey upon the weak and inexperienced. A few simple rules properly enforced by the sheriff and his deputies are all that is necessary to maintain good standards of care and administration."

lacking in the institution where it would probably do the most good.

Jails Are Not Reformatory. As a result of the idleness, the mixing of various classes, and the lack of constructive discipline in the jails, they are not reformatory. We have an abundance of facts to show this. Every study of recidivism in connection with jails cries it aloud. In 1933, 58.5 per cent of those committed to jails and workhouses had been committed before.⁴⁹ That this percentage is too low is indicated by studies in a number of workhouses and jails in different parts of the country.⁵⁰ A study of 1,288 jail prisoners in thirty-four county jails of New York State found that 66 per cent had been arrested more than once. Sixty-four per cent of those arrested only once were mentally abnormal, while 90 per cent of those arrested four or more times were mentally abnormal.⁵¹ What could better demonstrate the failure of this institution to prevent the repetition of a criminal act than these figures?

Jails Are Schools of Crime. Consequent on all these conditions in our jails—the mingling of “all kinds and conditions of men,” the idleness, the lack of wholesome discipline—is the destruction of whatever good results might come to the first offender by proper treatment immediately after arrest. A certain per cent of jail cases are persons thrust into jail for the first time. Possibly this was the first slip from the straight and narrow path. The shock of the arrest and entrance into jail has sobered this first offender. He is in a state of mind which would make him receptive to good counsel and other influences which would strengthen his resolve to turn from his evil ways. Here is an opportunity for constructive and helpful work in the redemption of one gone wrong.

Consider the jail as an analogy to the hospital to which a person has been sent after an accident or a serious attack of disease. While the parallel is imperfect from the point of view of causation, it is not far-fetched with respect to results—danger to the individual concerned. If the jail were equipped as a moral hospital, consider the change in attitude which might be effected. Are such constructive influences at hand? Sad to say, they are not. There is no man there who cares for the inmate’s fate, no one to whom

⁴⁹ *Prisoners 1923*, Bureau of the Census (Washington, 1926), p 150. See note 15 *ante*.

⁵⁰ *Journal of Criminal Law and Criminology*, XV, 61 (May, 1924) “A Study in County Jails in California” (State Board of Charities and Correction, 1916), pp 15, 53; Queen, *Passing of the County Jail* (Menasha, Wis, 1920), pp. 52-54; *Mental Defectives in Virginia*, State Board of Charities and Correction, p 70. The smallest per cent of recidivists in the jails which has come to the writer’s attention is 17.5 of 177 inmates in seventeen county jails of Wisconsin in 1920. See *Wisconsin Mental Deficiency Survey* (Madison, Wis, 1920), p 17.

⁵¹ “The Prisoner in the County Jail,” *Mental Hygiene Bulletin*, March, 1925

he can talk and who in confidence can strengthen the new-found resolve, "Never again!" On the contrary, he finds himself in the company of inmates, many of whom have had numerous experiences of this sort, who have become inured to the discomforts and shame of jail life and who laugh off and shame his repentance. The only influence about him is degrading, hardening, calculated to inspire a defense reaction in a studied indifference and cynicism. Says Dr. Hart of the Russell Sage Foundation, who has visited hundreds of the jails, workhouses, and police stations in the United States and who is of the opinion that as a rule the Christian people of the community know nothing and care nothing about the inmates:

"In every jail there are found some prisoners who are not hardened in crime but who desire to reform, but they are forced into association with the vilest criminals, who ridicule their penitence, exert themselves for their corruption, and blackmail them after their discharge. Yet no man cares for their souls . . .

"When an individual who is not vicious is arrested, he should have the help of a wise and interested group of Christian people. These people should be in touch with the sheriff, the jailer and the prosecuting attorney, and should stand ready to give encouragement, counsel and advice to prisoners who are open to good influences. But this work should not be committed to men and women who are lacking in experience, wisdom and tact.

"Such work would involve a very small expense, but it would need to be organized and advised by a wise and helpful State agent. In my judgment, this is one of the most important opportunities for the prevention of crime and for the saving of young people who have gone wrong" ⁵²

The National Council of the Department of Christian Social Service of the Episcopal Church, under the leadership of Dean Charles N. Lathrop, started a movement to organize the Christian people of each communion for the purpose of doing the same thing in the county jails of the country. Dean Lathrop recommends no cut and dried religious propaganda but sympathetic visits to those in the jail who are in need of understanding and help.⁵³

Mr. J. F. Wright, Executive Secretary of the Pathfinders of America with headquarters at Detroit, Michigan, has led a movement for the same purpose. He says:

"It is when the prisoner hears the big iron doors close and lock behind him for the first time that his heart cries out for a friend, and it is then that the social worker whose heart is in the right place and battling for humanity can make a

⁵² "And Ye Visited Me Not," *Literary Digest*, August 11, 1923, p. 34.

⁵³ *A Practical Program for Church Groups in Jail Work* (New York, 1923)

contact with the prisoner that will accomplish more good than after the prisoner has fought out those first conflicting emotions in his own mind and more than likely reached the wrong conclusions" ⁵⁴

ATTEMPTS AT SOLUTION OF THE JAIL PROBLEM

In spite of this history of neglect of the jail, numerous attempts have been made to solve the problem. Some efforts at ameliorating these conditions have been attempted in various parts of the country. State boards in some of the States have been empowered to inspect the jails and enforce certain minimum standards of cleanliness, ventilation, and other physical conditions. Others have conducted educational campaigns for the improvement of jails.⁵⁵ In a few States these measures have resulted in improvements; yet in spite of progress here and there the jails still remain for the most part such as we have described them.

Experiments to Reduce Idleness. Efforts have been made to reduce the idleness so prevalent in the jails. *Wisconsin's, Vermont's, and Delaware's parole experiments* may be cited. In spite of the success of Sheriff Tracy at Montpelier, Vermont, and Sheriff Whipple's energy and initiative in Rock County, Wisconsin, these experiments have not been widely successful.⁵⁶ During the World War, John L Whitman, then head of the House of Correction of Chicago, found it possible to keep the men busy and make the institution pay by salvaging the waste products of various city departments of Chicago and turning them into useful articles.⁵⁷ In some of the larger cities the House of Correction has become recently *an industrial prison*. Milwaukee, Wisconsin, provides an illustration of this attempt to use productively the men sentenced to the county jail. Certain industries are carried on there which bring some income to the county. However, the same difficulties with respect to prison labor arise in such institutions as we have considered in connection with the prison. It must be confessed that up to

⁵⁴ *Practical Efforts at Character Building for Jail Prisoners* (Russell Sage Foundation, New York, March, 1922), pp 6, 7.

⁵⁵ *Humanizing Georgia's County Jails*, Department of Public Welfare, Atlanta, Ga. (no date).

⁵⁶ For criticism of the Huber plan in Wisconsin, see Hart, *Employment for Jail Prisoners in Wisconsin* (Russell Sage Foundation, New York, March, 1922), pp 11, 13-14; Gillin, "The Paroling of Prisoners Sentenced to County Jails with Special Reference to Wisconsin," *Journal of Criminal Law and Criminology*, January, 1916, p 684. In some places it failed as a method of penalizing bootleggers sentenced to jail. The head bootlegger was at hand to hire the paroled prisoner from the sheriff at once upon conviction and thus release him to pursue his trade.

⁵⁷ Baldensperger, "Salvation by Salvage," *The Survey*, February 2, 1918, p 495; Baldensperger, *Mobilizing the County Jail*, Friends Social Service Series, Bulletin No 22 (Philadelphia, 1917)

the present time prison labor is no nearer a solution in the house of correction or the county jail than in prison, and in most county jails it is very much further from a satisfactory solution.

Judge De Lacy in Washington, D. C., tried the experiment of finding *remunerative employment for men on public works outside of the District Prison* in case they had been committed for non-support. Fifty cents a day of the man's earnings went to his family.⁵⁸ After the establishment of the workhouse at Occoquan, Virginia, where many of the prisoners worked out on the farm, the same policy was continued. A number of States have provided for such cases. Oregon, in 1907, passed a law compelling family deserters to work on the public roads, giving the county court discretion to pay the families a sum not to exceed \$1.50 per day. Indiana and Maryland in the same year provided for the confinement of such men in the workhouse and the permissive payment of excess earnings to the family. Colorado and Michigan passed a similar law in the same year. Michigan's law in 1910 began to produce results. In the other States just mentioned the law seems to have been little used. In Washington, D. C., under Judge De Lacy's plan of suspending sentence and placing men on public works and paying fifty cents a day for those who were in the workhouse, in four years \$104,759.68 was paid to the families of the men.⁵⁹ A number of progressive wardens of jails and houses of correction in some of the large States have developed *farms in connection with the institutions*, which have partially solved the problem of idleness, but like farms connected with prisons they are somewhat limited in their usefulness by reason of the fact that some of the inmates cannot be trusted at large.⁶⁰

In some of the courts misdemeanants have been placed on *probation* under suspended sentence by the judge, thus doing away with all of the evils of incarceration in a jail. This is one of the most promising movements in connection with the whole problem. If the county will provide a sufficient staff of trained probation officers, this method would take care of a large number of those who otherwise would have to be sent to jail. It would not, however, adequately provide for the vagrants, floaters, drunkards, and others who need custodial care.

⁵⁸ Spalding, "International Prison Congress, Section on Prevention," *The Survey*, XXV (November 5, 1910)

⁵⁹ Baldwin, *Present Status of the Family Desertion and Non-Support Laws*, address delivered at the National Conference of Charities and Correction, 1911, pp. 29-31. An abstract of this address is to be found in the published *Proceedings*, but the figures are lacking.

⁶⁰ Barnes, "American Penology," *Journal of Criminal Law and Criminology*, XIII, 226 (August, 1922).

Another movement to relieve the county jails of their burden and misdemeanants of a jail sentence is the *payment of fines on the instalment plan*. The Federal Census of 1933 showed that more than one half (31.7 per cent) of the total number of commitments to jails and workhouses in the United States for all offenses were for the failure to pay a fine.⁶¹ The practice of permitting men to pay the fine while on probation has been adopted in a number of cities. Figures from certain cities and States, gathered in 1913, showed that over 90 per cent of those placed on probation by the courts to pay their fines in this manner did so faithfully.⁶² The drop from 52.9 per cent in 1923 to 31.7 per cent in 1933 of jail inmates committed because of non-payment of fines probably was largely due to the extension of the instalment method of paying fines.

To prevent the intermingling of those sentenced to jail for an offense and those awaiting trial or held as witnesses, *two institutions should be provided in the larger communities, one for the convicted, used as a workhouse or house of correction, and the other a place of detention*. In a number of cities this movement has resulted in the building of a special detention home for women offenders and a special detention home for juvenile delinquents. In still other places juveniles who have been accused of an offense have been boarded in selected homes where they could be detained until their cases could be handled by the court.⁶³

The most promising experiment in connection with the minor offender is the *State farm for misdemeanants* established in a few of our States. The outstanding examples of this substitute for the jail as a penal institution are the State Farms of Indiana and Massachusetts and the workhouse of the District of Columbia. To Indiana's institution are sent all offenders sentenced to thirty days or more. At the discretion of the judge those sentenced for less time may be sent there rather than to jail. The counties pay transportation to and from the State farm, but the State pays for maintenance.

This plan accomplishes two purposes: (1) It places misdemeanants as well as felons under State authority. (2) It relieves in part the jails of those serving sentences, leaving them free to serve their original and primary purpose of detention. Since most of the delinquencies committed are violations of State laws, it has been urged that the State logically should handle the

⁶¹ *Prisoners 1923* (Bureau of the Census, Washington, 1926), p. 121. See note 15 *ante*.

⁶² *The Payment of Fines in Instalments by Offenders*, Municipal Reference Bulletin No. 4, Municipal Reference Library, Chicago (November, 1914), p. 5, Collins, "Placing Misdemeanants on Probation," *Proceedings, National Conference of Charities and Correction, 1911*, pp. 89-92.

⁶³ *A Municipal Detention Home for Women Offenders*, Friends Social Service Series, Bulletin No. 21 (Philadelphia, October, 1917).

offender. Of greater social importance, however, is the social justification that the State can do it better. On the State Farm the prisoners can be kept busy, thus solving the problem of idleness. By reason of the fact that the inmates are scattered over so large a space and are together only at meals and at night, chances of demoralization are less. The men are freer in their activities, are engaged in useful occupations, and do not degenerate physically and mentally.

Indiana's experiment has excited a good deal of interest and quite general approval⁶⁴ The results have been all that was expected by the promoters. In spite of the reluctance of some judges to break a long-established habit of sending men to jail, in 1922 thirty of the Indiana jails were empty, sixteen others had only one inmate, and eight more had but two⁶⁵

The State farm for misdemeanants is not a new invention in Indiana. In 1870 Belgium established at Merxplas a colony for vagrants which is one of the largest in the world.⁶⁶ The Canton of Bern, Switzerland, has another very successful institution at Witzwil, established in 1895.⁶⁷ In 1910 the Province of Ontario, Canada, established such a farm, although it receives men from sixteen to sixty years old convicted "for all the calendar of crimes known except the great crime of murder."⁶⁸ Cleveland, Ohio, in 1905, under the administration of Tom Johnson, began to take prisoners from the city workhouse to the city farms on a 2,000-acre tract on which were being established a municipal cemetery, the almshouse, and the tuberculosis sanitarium. In 1909 the first part of the group of buildings of the House of Correction on that land was occupied by the prisoners⁶⁹ Kansas City,

⁶⁴ Lane, "In the Healing Lap of Mother Earth," *The Survey*, January 1, 1916, pp 375-378, Butler, "Indiana's State Farm for Misdemeanants," *The Survey*, May 8, 1915, pp 135, 136; *Indiana Bulletin of Charities and Correction*, December, 1919, pp 388, 389

⁶⁵ About one eighth of the commitments for misdemeanors in 1922 in Indiana were to jails. Most of these might better have been to the State Farm. See *Annual Report, Board of State Charities of Indiana*, 1922, p 116.

⁶⁶ Van Schelle, "A City of Vagabonds," *American Journal of Sociology*, XVI, 1-20 (July, 1910), Carlile, *The Continental Outcast* (1916), Chaps 2, 3, Gillin, *Taming the Criminal* (New York, 1931), pp 201 ff, Dawson, *The Vagrancy Problem* (London, 1910), Chap IV

⁶⁷ Fetter, "Witzwil, A Successful Penal Farm," *The Survey*, February 4, 1911, pp 761-766, Gillin, *op cit*, Chap VI, Dawson, *op cit*, Chap VIII; Kelly, *The Elimination of the Tramp* (New York, 1908), Chap IV.

⁶⁸ Gilmore, "Farm Treatment of Prisoners at Guelph," *Proceedings, National Conference of Charities and Correction*, 1914, pp 48-52, Gilmore, "The Ontario Plan," *ibid*, 1915, pp 375-378, Neelands, *Industrial Training for the Misdemeanant*, Prison Leaflets No 46, National Committee on Prisons and Prison Labor (New York, 1919)

⁶⁹ Cooley, "The Farm Colony," *Proceedings, National Conference of Charities and Correction*, 1912, pp 191-194

Missouri, established a similar institution in 1909, and Congress in 1910 provided for a penal farm for the workhouse inmates of the District of Columbia on 1,150 acres of land at Lorton, Virginia.⁷⁰

It is probable that the recent depression has been responsible for some of the increase of the jail population in this country. However, the C.C.C. camps and the Transient Shelters under the Federal Government probably did much to prevent an enormous increase in the jail population.

A MODERN JAIL PROGRAM

Two problems must be kept in mind in attempting to cure the present evils of jails:

1. Certain people have to be kept in detention awaiting trial or serving as witnesses.

2. After conviction treatment must be applied to protect society and to change the social attitudes of the guilty. Except for historical reasons there is no excuse for treating misdemeanants and felons separately. This distinction between felony and misdemeanor in the law has no basis in penology except society's traditional attitude toward a felony. If, however, we accept the principle of modern penology that the criminal rather than the crime should be the basis of treatment, then it makes no difference whether a person has been guilty of a felony or a misdemeanor. However, since we already have jails and since public opinion accepts the distinction between a felon and a misdemeanant, a practical program for the treatment of the misdemeanant must take into account the ideas now prevalent.

Jails as Places of Detention. Since almost every county has a jail, how can they be used economically and efficiently? These institutions can be used as places of detention for those awaiting trial and such witnesses as cannot be trusted at large. They should not be used as places of punishment at all. With the development of a sound policy of bonds for appearance, they need not be used even as places of detention, except for those accused of crime who could not be discharged from custody on their own recognizance or secure bonds of sufficient amount and security to ensure their appearance.

Treatment Based on Study of the Individual. Before any disposition is made of a convicted misdemeanant he should be carefully studied. Knowledge of his physical condition, his mental state, and his social history will throw light upon the causes of his act and upon how he may be handled successfully, and such knowledge should be obtained as a basis of his treat-

⁷⁰ Lane, *op. cit.*, p. 378; Scott, "Municipal Correction Farms," *The American City*, December, 1916, pp. 623-630, Abbott, *The State Farm vs The County Jail*, Prison Leaflets No. 51, National Committee on Prison Labor (New York, 1919).

ment. A physician, a State psychiatrist as in Illinois, and skilled probation officers attached to the court could secure the information.

Probation. Even after conviction many of those now sent to jail might be placed on probation and be gainfully employed without further danger to society. In order to make this plan succeed there must be well-trained probation officers sufficient in number properly to look after the probationers. In some populous counties such a system is in operation.

Fines. Large numbers of those now sent to jail are unable to pay fines. If the practice grows of allowing them to pay their fines on the instalment plan under the careful supervision of probation officers, the need of the jail will be very greatly decreased.

Houses of Correction and Workhouses. Counties which have in them large cities may well provide houses of correction and workhouses in which can be confined those who cannot be set at liberty on probation or for whom a fine is inappropriate. There are always a certain number of minor delinquents who cannot be allowed liberty. In connection with these workhouses and houses of correction there should be forms of industry suited to the abilities of the individuals sent to them. There should be a farm on which offenders may work and produce a part, at least, of the food needed in the institution. No county having on an average less than one hundred delinquents should attempt to set up such an institution.

State Farms. There should be provided for all those counties in a State which have a small number of minor delinquents a State farm to which they can be sent. In connection with these farms certain industries can be organized to take care of the spare time of the inmates in winter. In the Southern States this is not necessary.⁷¹

It is just as desirable in such an institution that there should be established the payment of a small wage for the inmates as it is in the prisons. Such a wage gives an incentive to the man to work, and in case he has a family it provides some support for them by their natural supporter. In case he has no family his earnings may be given to him on discharge or may be used to make restitution for the damages he was responsible for and the cost to the county of his trial and care.⁷²

The Indeterminate Sentence. Misdemeanants as well as felons should be committed to these institutions on an indeterminate sentence and should

⁷¹ Each State may have one or more such institutions. When the State is not too large in area, one will be more economical. In large States there may be two or more such farms geographically distributed in the State so that the transportation expenses will not be excessive.

⁷² Schreiber, "The Payment of Wages to Workhouse Prisoners," *Proceedings, National Conference of Charities and Correction, 1915*, pp. 385-392.

be kept there until they are fit to return to society. Usually the short sentence of misdemeanants is a curse to society and should be abolished. Misdemeanants as well as felons should be disposed of by a State treatment board rather than by the court on the basis of a sentence prescribed by the legislature. They as much as felons need careful study and treatment individually if society is to be protected and the individual offender restored to society. The time when he will be fit to be discharged cannot be determined beforehand by either a legislature or a judge.

Parole. There is just as much need for the establishment of a good parole system in institutions for minor offenders as in those for felons. When it appears that they are able to conduct themselves properly in society they should be returned to it, under careful supervision, however, until they have shown their ability to make good. Some, even minor delinquents, should never be released because of their inability properly to conduct themselves at liberty.

Administrators. It is just as important to have competent administrators for the care and treatment of minor delinquents as for that of felons. If they are appointed for political reasons without reference to their capacity to manage such men successfully, any institution which can be devised will be a failure. If, however, instead of a large number of jails in each State there be one or at most a few State institutions, it should be possible to find competent men to administer them.

State Supervision and Control. There is no sound penological reason why misdemeanants should not be the wards of the State rather than the county. In 1877 England saw the difficulty of allowing the jails to be controlled by county authorities and took over their administration. Most minor offenders have violated the laws of the State and therefore logically should be treated by the State. Practically, however, so firmly entrenched is the notion of county authority over misdemeanants that in many States at the present time it would not be possible to have State care supersede county authority over them. The State farm as in Indiana is a compromise measure between the two. As rapidly as possible, except in the more populous counties, the State should take over entirely the treatment of all convicted delinquents. The arrest, detention, and trial of the accused would still remain with the county, while the functions of treatment which the county has failed to perform properly would be assumed by the State.

When State care and treatment is impossible, the State should at least have authority to supervise all police stations, houses of correction and workhouses. It should set standards to which all these institutions should conform in the interests of health and morals. Such procedure, however, is only

a half-way measure and should only be a step toward complete State control of all delinquents as soon as possible.

The Contract System for Minor Delinquents. There is no more excuse for letting a petty delinquent out on contract than a felon. Abuses are bound to arise as has been shown in many of the large jails and work-houses and in the convict camps of the Southern States. No county should be allowed to lease its misdemeanants, as was the practice in Florida and some other Southern States in the turpentine and lumber camps. Inevitably such a practice leads to abuses which no self-respecting State can countenance.

CONCLUSION

The conclusion of the whole matter of the treatment of misdemeanants is that they, just as felons, must be treated according to the principles of penology. The time ought to come when the distinction between felons and misdemeanants would be entirely done away with, when each individual should be sentenced to the institution in which he can be most appropriately cared for and if possible prepared to return to society, or in which he can be kept indefinitely for the protection of society. At the present time the distinction between misdemeanants and felons gives us two sets of penal institutions, for which there is no justification in either economics or sociology.

QUESTIONS AND EXERCISES

1. Outline the early history of the jail (a) in England; (b) in the United States.
2. In what important respects has the jail failed?
3. What are the reasons for the failure of the jail?
4. Visit the jail in your home community and then describe in detail the conditions you found there in the light of the discussion in this chapter
5. Discuss the proposal *pro* and *con* that the men sentenced as misdemeanants for more than thirty days by the courts of all counties which do not have a house of correction must be sent to a State farm for misdemeanants
6. In case you were appointed on a committee to visit jail prisoners, outline in detail what your program would be
7. Outline a program for handling misdemeanants which would obviate the evils of the present jail system.

CHAPTER XXVI

JUVENILE REFORMATORIES

SPECIAL institutions for delinquent children grew out of recognition of the evils connected with their association with hardened criminals. For over two hundred years such evils have been recognized.

ORIGIN OF JUVENILE REFORMATORIES

In Europe. In 1704, Pope Clement XI founded the hospital of St. Michael at Rome. In this institution he had a hall set aside for the boys. Over the door he had inscribed "For the correction and instruction of profligate youth, that they who when idle were injurious, may when taught, become useful to the State." While this institution was not primarily a juvenile reformatory and had, in addition to the hall for delinquents, departments for orphan boys and for the aged and infirm, it does mark an attempt to give correctional training in a separate institution to fifty criminal boys. In this department of the hospital Howard says there were sixty cells in three tiers, one above the other, on the two sides of the hall. The corridor between was used as a common workroom by day. The rule of silence was enforced.¹

A similar institution was founded by Johannes Falk about 1813 in Weimar, Germany. The institution was under the care of the society founded by Falk called "Society of Friends in Need." This institution cared for the children of criminals and for delinquent children. It was an industrial school intended to give useful employment to the inmates.

In 1819 Count Adalbert von der Recke-Vollmarstein established an institution at Overdyck near Bochum, Germany, to care for neglected and abandoned children. In 1822 he moved the institution to Duesselthal, where the children were taught farming and certain of the common trades. In 1823 an institution founded in 1819 in Berlin was changed in character so that in addition to caring for beggar boys, poor girls, and other destitute children, it had also a reformatory department. In 1820 an establishment

¹ Wines, *Punishment and Reformation*, Revised Edition (New York, 1919), p 122. For the original account see Howard, *Appendix to The State of Prisons in England and Wales*, etc (Warrington, England, 1784), pp 75, 76

similar to that of Falk in Weimar was founded in Erfurt, while still another in the same year was established in Aschersleben. A society for the education of children morally neglected, established in Berlin in 1824, founded a similar institution in that city.² By 1826, according to a publication of the Prussian Government, a number of cities of Prussia had similar institutions, among them Memel, Breslau, Danzig, Berlin, and others.³

In Great Britain. The origin of institutions for the correction of juveniles in Great Britain goes back to certain private organizations founded in the latter part of the eighteenth century. The Marine Society founded in 1756 and the Philanthropic Society founded in 1788 gave special attention to the children of convicts. To their care were committed from time to time under conditional pardon boys sentenced to transportation or to periods of imprisonment. The Philanthropic Society, incorporated by an act of Parliament in 1806, did such good work that in 1837 the government made an attempt to apply reformatory treatment to certain juvenile offenders at Parkhurst Prison. Outdoor industrial employment was combined with school instruction and religious teaching in the effort to reform juvenile delinquents there incarcerated. However, these boys were in a prison. This fact militated against the attempt at correction, and this experiment was closed in 1864. In 1843 the Home Secretary, impressed by the superior work of the Philanthropic Society, suggested to that society the establishment of a reformatory aided by a subsidy from the treasury. The society did not, however, accept the proposal, since it feared that the acceptance would sacrifice the voluntary contributions it was receiving. It did, however, a little later send the warden of its school to France to study the farm colony established at Mittray. The result of this visit was to transplant the institution from London to the country, in Surrey, where it still stands. It is described as one of the most efficient institutions for the correction of juveniles in England.

Origin in America. It is said that Thomas Eddy, a New York Quaker, and some of his friends began to discuss a reformatory for juvenile delinquents in that city as early as 1815. Out of the meeting of these citizens grew the Society for the Prevention of Pauperism. This society in 1822 urged the establishment of a reformatory for juveniles to which children might be sent instead of to prison. The same year Edward Livingston urged the establishment of such an institution. The inspiration seems to have come

² Moreover, in the British houses of correction established even earlier than these institutions there were departments for juvenile offenders, but these could hardly be called juvenile reformatories.

³ Note by Lieber in de Beaumont and de Tocqueville, *Penitentiary System in the United States and Its Application in France* (Philadelphia, 1833), pp. 108-110.

from a man named Griscom, who in 1818 and 1819 had visited England and the Continent and had discovered that England in 1817 had founded a society which had established a juvenile reformatory. This institution Mr. Griscom had visited.⁴ This society in its report urged that such institutions should be schools of instruction and reformation rather than places of punishment.⁵

As a result of the active interest taken by this society a committee was appointed to study the matter, which recommended in 1823 the erection of a separate building for juvenile offenders called the House of Refuge. It was intended to receive young offenders both before and after trial and to serve also as a place of temporary refuge after discharge from prison. The sum of \$18,000 was raised in private subscriptions, and in 1824 a board of managers was appointed. The institution was incorporated by the State and given broad powers to receive and retain as long as necessary juvenile delinquents committed to it. Here for the first time we find the indefinite sentence for delinquents. The Society in turn was obliged to submit an annual report to State authorities. Commitments might be made by the police courts, courts of special or general sessions, or the commissioners of the almshouse.⁶ This institution was unique in one respect. *It was the first institution, so far as we know anywhere, to which children were committed by court.* The earlier institutions to which we have referred in Europe received inmates only through voluntary applications. In 1826 Boston had set apart a portion of its old House of Correction for juveniles much on the lines already established in the English houses of correction. In 1828 Philadelphia established a similar House of Reformation to eliminate juvenile offenders from the Walnut Street Prison, which by that time had proved to be a distinct failure.⁷

The Boston institution for a time had the most remarkable career of these early institutions, thanks to the work of its superintendent, a Mr. Wells. Mr. Wells, once a student at what is now Brown University, had been expelled from that institution because he refused to tell on his roommate who had been in a student prank. Later the same institution awarded him the A.M. degree for his successful work with juveniles. He showed remarkable insight into the principles of juvenile correction for his day and genera-

⁴ Lewis, *Development of American Prisons and Prison Customs, 1776-1845* (Albany, N.Y., 1922), p. 294.

⁵ *Report of Society for the Prevention of Pauperism, 1821*, cited in Lewis, *op. cit.*, p. 295.

⁶ Lieber, in de Beaumont and de Tocqueville, *op. cit.*, p. 109; Lewis, *op. cit.*, pp. 295-297.

⁷ Lewis, *op. cit.*, pp. 40, 160, 302-303, 316.

tion. One of the fundamental principles he established in the House of Reformation was that no boy should be required to inform on another nor should he be allowed to do so unless it was evidently for conscientious reasons rather than for reasons of personal advantage. Corporal punishments were entirely excluded, and the children had a form of self-government in that they were permitted to vote on the methods by which they would be corrected. Each child recorded every day in a book kept for that purpose his marks of merit and demerit. They had a jury of twelve children who tried offenders against morality and certain other offenses. Moreover, the children elected their own monitors.⁸ The inmates of the institution were divided into six classes according to conduct. Those in the lower classes were deprived of certain privileges. These features anticipated experiments in self-government not only in juvenile reformatories but in institutions for adult delinquents by nearly 100 years. Unfortunately, Mr. Wells was ahead of his time and was soon dismissed by the Common Council of the city of Boston.⁹

DEVELOPMENT OF JUVENILE REFORMATORIES

In Great Britain. In 1846, the attempt was made to pass a bill in Parliament to establish governmental reformatory schools. This bill failed of passage. In 1854 a similar bill was made law. This law was modeled on the French plan as carried out in the farm colony established at Mitrrey. It provided industrial training, the introduction of the family system into the institutions, and careful supervision on parole. This bill, however, went further than the French system and provided for the payment of part of the cost of care of the juvenile by the parents. It also carried a provision, which has since been abolished, for a short period of imprisonment for the offender before being handed over to the school.

In a number of acts passed since that time, the following changes have been made:

- (1) The age at which juvenile delinquents may be sent to reformatories has been raised to twelve years. Those below that age are sent to industrial schools.
- (2) The period of imprisonment prior to commitment to the reformatory was abolished in 1899.

⁸ These features in the Boston institution attracted the special attention and favorable comment of de Beaumont and de Tocqueville when they visited the United States about 1830.

⁹ Lewis, *op. cit.*, pp. 303-309; de Beaumont and de Tocqueville, *op. cit.*, Part III, Chap. I, Appendix No. 13. The institution at South Boston attracted the attention of Charles Dickens when he made his American visit and is described in his *American Notes*.

(3) The period of detention in the reformatory is limited to not less than three and not more than five years, the offender in no case to be detained beyond the age of nineteen.

(4) In 1891 the managers of the reformatories were granted extensive powers to dispose of children without their parents' consent

A movement which is now coördinated with the reformatories but which had an entirely different origin is represented in the *industrial schools*. These grew out of the old "Ragged" schools founded by John Pounds, the Portsmouth shoemaker, and developed by such men as Lord Shaftesbury in London, Mary Carpenter in Bristol, Dr. Guthrie in Edinburgh, the Baxters in Dundee, and Sheriff Watson in Aberdeen.

In 1854 an act applying to Scotland only, and in 1857 a similar act for England, were passed, establishing industrial schools. To these schools a sheriff could commit vagrant children up to the age of fifteen, though they had not become delinquent. In the next seven years, acts were passed which included not only vagrant and destitute children but delinquent children under twelve and refractory children under fourteen. In 1866 these industrial schools in Scotland and England were consolidated. Various other acts have been passed affecting these schools so that to-day there is a rather complete system of industrial schools for youthful offenders throughout England. At the present time the following children may be committed to these schools: destitute children, mendicants, vagrants without proper guardianship, refractory paupers from workhouses, truants from the public elementary schools if in danger of delinquency, incipient criminals, and children of bad parents.

Therefore, at the present time there are four classes of schools in England dealing with juvenile delinquents or children in danger of becoming delinquent:

- (1) Reformatory schools
- (2) Industrial schools.
- (3) Truant or short-detention schools.

(4) Day industrial schools designed for truant children who return to their homes in the evening.

Our chief concern is with the first two classes of institutions. Some of them in 1928 were in the country, some in the city, some were suburban, and others for boys preparing for the navy were on ships. In England and Wales in 1928, the latest date of published information available at this time, there were twenty-eight reformatory schools, twenty-three for boys and five for girls, and fifty-six industrial schools, thirty-six for boys and twenty for girls.

Most of the reformatories were under private auspices certified by the Home Office. More of the industrial schools are under the local public authorities.¹⁰

In the United States. The history of early American juvenile institutions was much the same as that of the prisons. The first period of promise was followed by one of steady degeneration. In 1834 the Boston House of Reformation became one wing of the House of Correction. In 1836, while the children were removed to a new institution apart from the House of Correction, their labor was let out to a contractor at ten cents per day.

The Philadelphia institution, opened in 1828, like the New York institution, started as a private enterprise for which \$15,000 had been raised, to which was added \$40,000 by the Pennsylvania legislature. The separate cell system was adopted, and a huge wall was constructed around it which gave it very much the appearance of a prison. A somewhat greater variety of trades was taught than in New York or Boston, but the labor of the children was let out to a contractor at twelve and a half cents a day. From the experience of the Philadelphia House of Refuge, it became apparent that these institutions were very much more successful with young children than with older ones, and the managers urged that only children under sixteen years of age be admitted.¹¹

The first step to organize a State institution for juvenile delinquents was taken by Massachusetts in 1847 when the State Reform School at Westborough was established by law.¹² However, the first State to make the juvenile reformatory un-prison-like was Ohio. In 1854 the Ohio State Reform School, now the Ohio Industrial School for Boys, changed from prison buildings and discipline to school and home buildings and a discipline based upon the theory that children are not criminals.¹³ The State Reform School at Lancaster, Ohio, introduced the first cottage system in America.¹⁴

In 1833, when de Beaumont and de Tocqueville visited the United States, there were not more than three juvenile reformatories or houses of refuge in this country. By 1850 in the United States there were but eight such institutions. The number, however, gradually increased. In 1900 there

¹⁰ Certain changes in the total and relative number of reformatories and industrial schools occurred between 1904 and 1928. See Blue Book, *Memorandum Giving Some Account of the Reformatory and Industrial Schools of Great Britain* (London, 1904), pp. 5-16, and compare Home Office, *Fourth Report on the Work of the Children's Branch*, pp. 33, 109. See also the discussion of the situation in Myers, "England's Industrial and Reformatory Schools," *Social Forces*, X, 373-378 (March, 1933).

¹¹ Lewis, *op. cit.*, pp. 317-320.

¹² Wines, *State of Prisons and of Child-saving Institutions* (Cambridge, Mass., 1880), p. 126.

¹³ Hart, *Preventive Treatment of Neglected Children* (New York, 1910), p. 11.

¹⁴ *Proceedings, American Prison Association*, 1910, p. 35.

were sixty-five such reformatories reported, with a total of 19,410 inmates. These reformatories reported that during their history they had received 209,600 juvenile delinquents. In 1928 the United States Bureau of Education reported 173 institutions for juvenile delinquents. The number of inmates reported for 1926-27 was 84,317—65,174 boys and 19,143 girls. Of the State institutions forty-eight were for girls only and eleven for both boys and girls.¹⁵

THE FALL OF THE HOUSE OF REFUGE

The early institutions in the United States were greeted with enthusiasm here and excited the admiration of such distinguished foreign visitors as de Beaumont and de Tocqueville. These gentlemen report that "of 513 children who were returned from the house of refuge of New York into society more than 200 have been saved from infallible ruin, and have changed a life of disorder and crime for one of honesty and order." To-day, unfortunately, juvenile reformatories do not enjoy a very high esteem.

Why the Change in Attitude? *First*, consider the ideals of those who established the early American institutions, and the character of the early administration. The ideal of the American house of refuge was not that of punishment, but of training in good conduct and for a useful trade. Moreover, these early institutions of New York, Boston, and Philadelphia, when the juvenile was let out, followed him by a system of supervision intended to make sure that he was going right. If he relapsed, it was the privilege of the institution to retain him until he was of age.

Furthermore, the men at the head of these early reformatories in the United States were unusual men, at least in New York and Philadelphia. De Beaumont and de Tocqueville remark, "If a model of a superintendent of a house of refuge were required, a better one, perhaps, it would be impossible to find, than that which is presented by Mr. Wells, and Mr. Hart. A constant zeal, and indefatigable vigilance, are their lesser qualities; to minds of great capacity, they join an equanimity of character, the firmness of which does not exclude mildness. They believe in the religious principles which they teach; and have confidence in their own efforts. Endowed with deep sensibility, they obtain still more from the children, by touching their hearts, than by addressing their understandings. Finally, they consider each young delinquent as their child; it is not a profession which they perform, it is a duty they are happy to fulfil."

¹⁵ Barrows, S. J., *The Reformatory System in the United States*, Reports Prepared for the International Prison Commission, 50th Congress, First Session House of Representatives, Document 459 (Washington, 1900), pp. 227-228, *Industrial Schools for Delinquents*, Bureau of Education Bulletin, No. 10, 1928 (Washington, 1930).

Second, when the first flush of enthusiasm had died away, thanks to politics or indifference, and small men had taken the places of those who had seen in the juvenile reformatory a great opportunity, these institutions became less schools and more juvenile prisons. The glory of their idealism had departed; in its stead had come deadening routine and repression.

Third, more recently there has risen a sincere and deep-seated distrust of institutions for children. Upon the horizon of social experience have appeared better methods of correcting the defects of character. The juvenile court, with its parental attitude and its system of probation, placing children in better social surroundings; juvenile protective associations, with their ideals of prevention; the Big Brothers and Big Sisters, the Boy Scouts, etc., have shown us a better way for all but the defective and the incorrigible. Moreover, as more careful study has come to be given to the history of the inmates of institutions for adult delinquents, some doubt has been thrown upon the value of the juvenile reformatory.

Symptomatic of *the defense* offered in favor of juvenile reformatories are the words of Ruggles-Brise, for many years the head of the prison system of England. He says concerning the Borstal system of England, which includes juvenile delinquents

"Given the material we work with, at first slow, stubborn, impenetrable, with no outlook in life but that of criminal adventure, with its gamble—but its ultimate certain doom, the Prison—any impartial visitor will, I think, agree that there is a wonderful metamorphosis—the conversion of the inveterate gaol-bird of a few years ago to a strong, well-set-up, well-drilled handy English lad, with respect for authority, with a new birthright, qualifying him to enter the ranks of honest, industrious labour. Such a conversion in a few cases would amply justify the system, and all the expense and labor it has entailed; but when the records of the Borstal Association can show that this conversion takes place in many cases, it must indeed be a great encouragement to all engaged in social work, even in the most difficult places, that such results will certainly follow upon healthy influences, steadily and wisely applied."¹⁶

On the other hand, the *critical attitude* toward them is represented by such a statement as the following from Tannenbaum:

"One who would understand the possibility for evil, for emotional distortion, of juvenile institutions must talk at length with men who were brought up in them. He would be startled at the tales of cruelty, barbarism, neglect and mistreatment, which, if they were not so widely corroborated by practically all men who have been brought up in such institutions, would seem unbelievable. I do not accuse of cruelty the men and women in charge of them. All one has to

¹⁶ Ruggles-Brise, *The English Prison System* (London, 1921), pp. 99-100.

do is to understand the conditions under which they operate. They are but human, given to exasperation, given to becoming callous and indifferent, occupied and troubled with personal interests which make system and method essential for dealing with children. System and method imply regularity, and regularity implies where children are concerned, inevitable deviation, difference, and friction, and to maintain regularity, discipline becomes necessary, and the limits of discipline vary very widely, they vary as widely as the human beings concerned vary; and what that means in the life of the children one need not specify, except to say that it means suppression.

"The length of institutional life varies. It is, however, usually long enough to institutionalize the boy, in the sense that it tends to make him unfit for any normal and regular occupation. If he does not stay there until he is twenty-one, he very often returns two or three times to some juvenile reformatory institution before he reaches that age. He returns because his experience in the reformatory has done nothing, generally speaking, to add to his adaptability. In the institution he has learned bad habits. I remember one 'hardened' criminal saying to me, 'I was sent to a juvenile institution at the age of eleven, and returned at about fifteen as a good pick-pocket. I went to a reformatory at seventeen as a pick-pocket, and returned as a burglar, with all that implies in one's life and habits. As a burglar, I went to a state institution, where I acquired all the professional characteristics of the criminal and have since committed all the crimes, I suppose, which most criminals commit, and expect to end my life as a criminal.'"¹⁷

Results. These are general statements. We should like to know what have been the results measured statistically. Unfortunately there have been very few careful studies which show what proportion of those who have been sent to juvenile reformatories have done well after release. In the early years of this century, however, a study was made in New York State of 444 juveniles released on parole from two such institutions in that State. In 1906 and 1907, 444 girls paroled from the New York State Industrial School and the New York House of Refuge were studied as to what happened to them after leaving the institution. Miss Miner found that 32.87 per cent were doing well; 26.85 per cent were doing badly; 13.43 per cent were doubtful; 23.61 per cent were not heard from; and 3.24 per cent had died.¹⁸

In 1916 a study was made of 408 delinquent boys committed by the Juvenile Court of Seattle, Washington. Of this number 346 were committed to the Parental School, and some of this group had never been delinquent, but dependent. Of those sent to the Parental School 13 per cent showed unsatisfactory conduct following discharge, while of those sent to the re-

¹⁷ Tannenbaum, *Wall Shadows* (New York and London, 1922), pp. 69-73.

¹⁸ *The Survey*, February 16, 1907, pp. 903-919.

formatory 11 per cent were known to have served or to be serving time in some correctional or penal institution.¹⁹

Healy and Bronner found that of 164 successes among juvenile delinquent boys in Chicago, 56 per cent, and of 256 failures 86 per cent had experienced a juvenile correctional institution. For females 56 per cent of the successes and 79 per cent of the failures had been in such an institution. In their first Boston series for boys 27 per cent of the successes and 40 per cent of the failures, in the second series 36 per cent of the successes and 50 per cent of the failures, had been in a juvenile correctional institution.²⁰

The Gluecks found in a study of 510 offenders committed to the Massachusetts Reformatory for Men that 34.6 per cent had before been committed to industrial schools.²¹

Mental Abnormality and Reformatory Failure. Drs. Healy and Bronner have shown that of 675 Chicago juvenile delinquents 79 per cent were of normal intelligence, 16 per cent feeble-minded, and 5 per cent psychotic. While of the mentally normal 49 per cent were failures, of the feeble-minded and psychopathic personalities 67 per cent, of the psychotic 71 per cent, of the psychoneurotic 40 per cent, and of the constitutional inferiors 62 per cent were failures. Of 125 sent to correctional institutions eighty-eight were failures (71 per cent).²² Since often mental defectives who commit crime or are delinquent are sent not to special institutions for the defective but to correctional institutions, it is but natural that large numbers of those who are in juvenile correctional institutions are more difficult to reform.

While there are other factors than intelligence to be considered in the matter—namely, temperament, social history, emotional conditions, and circumstances after release—a study of 233 boys released from the California State Training School at Whittier shows that there is a degree of positive correlation between mental capacity and success after release.²³

¹⁹ Cowdery, reviewing Phillips, *A Study of the After-Career of 408 Delinquent Boys Committed from the King County Juvenile Court to the Boys' Parental School and the State Training School during the Five-Year Period, 1911-1915*, *The Seattle Juvenile Court Report for the Year 1916* (Seattle, Wash., January 17, 1917), p. 8, in *The Journal of Delinquency*, II, 299 (September, 1917).

²⁰ *Delinquents and Criminals, Their Making and Unmaking* (New York, 1926), pp. 72-75 and Tables 14, 15, 16.

²¹ 500 *Criminal Careers* (New York, 1930), p. 145.

²² *Op. cit.*, Chap. XVI and Tables 40, 52, see also Ordahl and Ordahl, "A Study of Delinquent and Dependent Girls," *Journal of Delinquency*, III, 70 (March, 1918).

²³ Clark, "Success Record of Delinquent Boys in Relation to Intelligence," *Journal of Delinquency*, V, 174 ff (September, 1920). See also Mathews, "A Survey of 341 Delinquent Girls in California," *Journal of Delinquency*, VIII, 228 (May and July, 1923).

RECENT EXPERIMENTS

The changes which we have seen taking place since the idea of a juvenile reformatory originated in 1824 have continued. Many experiments are continually being made in the technique of correcting the conduct of juveniles. While the tendency in recent times has been to send to the juvenile reformatory only those cases which have not responded to treatment in the juvenile court, Boy Scouts, Big Brother organizations, orphanages, Junior Republics, and similar institutions, no hard and fast line is possible between these institutional methods and the State reformatories. So much depends upon the character of the reformatory as determined especially by the insight and skill of its superintendent and officials.

Case Treatment of a Boy. That proper treatment in an institution may work wonders in the correction of evil habits, even in the case of some delinquents who have failed to profit by training in another juvenile reformatory, is shown by the story of a young pickpocket. Thirteen years old when he finally was placed in an orphanage which had an understanding superintendent, he had a very bad history to be overcome. Born prematurely into a family composed of a drunken father, who had abused the mother, and a good but weak mother, from his earliest days he had found his mentors in the boys of the streets. Habitually truant from school, he early became a member of a bad gang of the streets. As he grew older he became a member of a very tough gang, and by reason of his quick intelligence and small physique he became a most skilful pickpocket. He also learned to pick locks. He was sent to a disciplinary school, but upon discharge returned to his old haunts and ways of life. As a last chance before being sent to the Reformatory he was sent to the orphanage in the hope that some change might be made in him there. It was a fortunate thing for him. The following story of his treatment under this wise superintendent is given to show how by individualizing the treatment, which consisted in a most remarkable individual and group pressure, this warped character was rehabilitated:

"The first few days of his stay at the Home were uneventful and peaceful. He was obedient, well-mannered, and apparently anxious to please. But his first Sunday at the institution was a memorable occasion for all within the portals of the place, whether as resident or as visitor. Silently, unobtrusively, and skillfully, he went from the pocket of the director in the office to that of the humble visitor in the children's hall, and democratically and impartially extracted from each whatever contribution his nimble fingers could 'touch.' Then he made a clean getaway with a substantial sum as the result of his prowess.

"The monitor who had been appointed his Big Brother, feeling that his absorption in a ball-game held at the Home grounds that afternoon had been responsible for the other's defalcation, earnestly and thoroughly searched every nook and cranny favored by the city's youthful reprobates. After several days of fruitless effort, he pounced upon him after nightfall, in a forsaken lot near his home, surrounded by his gang of ragamuffins, who were making merry with sandwiches, ice-cream cones, and bottles of pop, and enjoying an account of his escapades.

"'Cheese it!' he cried to his comrades, who scampered away, like rats to their holes, and then facing the older boy, who was seriously regarding him, he announced, 'I was coming to sleep there to-night anyway; I ain't got no more money.' And he willingly accompanied his mentor.

"He was brought into the office, much the worse for the wear and tear of his wanderings, but otherwise unrepentant and unashamed; rather prepared to boast of his exploits.

"'Do you think it right to pick a man's pocket? How should you like to have your pocket picked by somebody?' he was asked.

"He looked up quizzically, his eyes gleaming and his mouth puckered in amusement, 'I just dare anyone to pick my pocket—let me jus' catch 'im.'

"'What would you do?'

"'Huh?' he queried. 'Jus' don't let him. I ain't no duck to have my pockets picked. I'm too quick.' With that he turned his pockets inside out, and said with a doleful grin, 'Ain't got nuthin' in 'em anyway now.'

"'But you haven't answered the first question. Do you think it right to pick a man's pocket?'

"He looked thoughtful and evidently perplexed. 'Well,' he said after a pause, 'the man ain't goin' to give you the mon', so what's you goin' to do about it?'

"'How about earning it?'

"He screwed up his small face in mockery and laughed outright. 'Say,' he questioned, 'what do you earn a week?'

"Rather a rude question, but he was answered to his satisfaction, for he shrugged his shoulders triumphantly and waved his hand in derision. 'Gee,' he said, in cool, scornful tones, 'I can make more 'an that in a day. I got a talent in my hands, I tell you,' he flung out his hands and regarded them lovingly,—'they can make more money for me than you know. Bet cher life, they're all right.'

"'Who told you about the talent? Who said your hands were talented?'

"'That guy in the school said they're so quick and—I guess I forgot that word—s'pose he meant smart, and that they're sinstinctly talented that way.'

"Suddenly he leaned across the desk. 'Scuse me,' he said; and the next moment, he held up triumphantly the watch that his light fingers had 'touched,' even before his intentions were realized. 'You see,' he said, laughing merrily, 'how I do it? One! two! three!—and it's gone! Ain't it some talent? Here, take your watch! I don't want ter keep it—jus' took it to show you.'

"For what else have you a talent? Anything you'd like to be when you grow up?"

"He scratched his head thoughtfully. 'Well,' he ruminated, 'I guess I got a talent for locks, too. I can make a key for any lock made. Want ter see me? You jus' show me a lock, and I'll show you how I open it,' he boasted

"But what do you want to be when you grow up?"

"Guess I'll blow up safes with dynamite, and make lots of money and have bully times."

"Suppose you're caught and put in prison, what then?"

"His eyes narrowed and he tossed his head. 'But I'm a slick one, I am, honest! I ain't no fool—wait till I grow up, then they can't catch me'

"If you're slick, how is it they caught you now?"

"Aw, gee, them blokes can run down the little fellars easy. When I'm big, I bet you the cops can't get me"

"All right," he was told; and then came the question, which, unknown to him, held his fate. 'Say, how would you like to be partners and stay here till you grow up?"

"His astonishment was plainly manifested in his face. 'You want ter be my pardner?' he queried, as if not believing his senses.

"Your partner, son," was the emphatic reply

"Sure thing," he cried gleefully, and extended a dirty paw; 'shake,' he said.

"Now it's all arranged," he was informed very quietly. 'You stay here till you grow up, and come to your partner every time you want to pick a pocket or a lock, and talk it over'

"There was rather a rueful expression on his face at that. Evidently instinct warned him of a trap, and for a moment he repented, but he was a game sport.

"Sure, you got to do that with pardners," he said, bravely enough.

"A solemn compact was then entered into, by which he bound himself to come to his 'pardner' when ready to do any 'job,' and not to run away without due warning. In return, he was to be given a good home, plenty of 'eats,' and be taught in the manual-training classes whatever he liked.

"In a couple of weeks, bet you I'll know how to make a key for all the locks in the world," was his parting remark, as he left the office to be cleaned up and fed.

"The next morning, bright and early, he was in the office. 'Say, pardner,' said he, 'you got lots of junk in that basement. I know a place where the geezer will pay you lots of money for that'

"The 'junk' referred to consisted of various supplies left by the plumbers who had been working in the basement the previous day.

"All right, son," he was informed, 'if the junk belongs to your partner, you may sell it for what you can get from the dealer. Let's go down and see'

"Standing before the 'junk,' he was told, inasmuch as the materials lying there belonged to the plumbers, his 'pardner' did not think it quite right to dispose of them before notifying the owners

"But they won't give it ter you. Wait, you see!" he warned.

"Meanwhile, awaiting the arrival of the plumbers, it was suggested to him to accompany his 'pardner' to school. His eyes mirrored indignation and dismay. It was obvious that he repented of the bargain into which he had permitted himself to be drawn, but loyalty to one's 'pardner' was paramount. 'I never had a pardner like you,' he observed, as he gravely permitted himself to be persuaded to take the unbeaten track to school, 'you're funny. What's you want ter go to school for? Don't cher know enough?'"

"During that sober, conventional walk to the school that morning, it was painstakingly explained to him that education assists a man in his profession; if he intended to be a pickpocket when he grew up, why, a knowledge how to count the money he would pick from pockets would undoubtedly redound to his advantage. Further, people would not be able to charge him double the amount of a thing because he did not understand figures.

"'That's so,' he said, thoughtfully, 'them darn geezers first want to see your junk and then pony up a jit (nickel) for what's worth a buck (a dollar), if you don't watch out what they hand you out. Plenty of times they cheated me.'

"'But they never would have done so, if they knew that you could count,' he was told.

"'That's so,' he said again, 'but say, pardner, I don't have to stay in the poke (school) all day?'

"'Of course not,' as he gazed up keenly, suspicion and combat in his eyes. 'The only thing is, that you're some smart guy, believe me, and is there any reason why you can't win the school prize as well as another fellow who isn't so smart?'

"'Sure thing I can,' he said heartily; 'got to dig (study).'

"By dint of careful reasoning, that it would be a remarkable thing for him to show all those who didn't believe that he could, if he wanted, carry off honors in school, as readily as he carried off the contents of pockets, and that learning would enable him to get even 'with them skinners,' he reluctantly consented to give the matter a 'try out.'

"He was placed in the ungraded class, under the charge of a very able and well-trained teacher, and his Big Brother was instructed to call for him and accompany him home. 'Watch out for that junk!' was his good-bye to his 'pardner.'

"That day in school was a sad one for his conceit. 'Say,' he confided regretfully, 'them little guys know more 'an me'

"'Going to let them get ahead of you, eh?'

"'Nix on the job,' he fired back, 'I'll show 'em'

"He left for a game of ball in the playground, but returned almost immediately. 'What did I tell you?' he queried angrily. 'Them plumbers don't want to give their junk away.'

"'Let them keep their old junk then. You just show those fellows in school you can win the prize away from them, and you and your partner will go down town and have some good time'

"All right, pard, I'm it!" He saluted brightly, smiled, and went back to the game interrupted by the tempting 'junk.'

"Hardly was the game over, when the manual-training shops awaited him. Here he felt quite at home and was busy and contented. He showed a marked predilection for printing, which was immediately utilized for his benefit.

"For several weeks he was not left a moment to himself, though he was kept unaware that the constant supervision was intentional. He, at first thought, regarded his Big Brother, who was his shadow, as a necessary institutional evil; and later became fond of the fine, wholesome boy who was his friend and comrade. Two or three times a day, he would glide into the office with suggestions of various 'jobs' to be done. Always a lengthy argument would follow about the inadvisability of 'hooking' school or a class because of a 'job that wasn't worth while at all.'

"But I'll lose my talent in my fingers if I stop for a long time," he protested.

"Nonsense! Give your fingers a rest and they'll grow stronger and bigger to do whatever you want them," he was told.

Temptations however assailed him so strongly that several times he managed to elude vigilance and run away for a day or two. Then he would return, himself, come very quietly and shamefacedly into the office, and seek pardon most humbly. 'You know, pardner,' he would say apologetically, 'it's not right to do a job without you—but you're a funny kind of a pardner, anyway.'

Long private conferences and walks would ensue, during which a moral sense of right and justice would be brought home clearly to him. His affection for his mother was noticed, and that excellent quality was used as an additional means to work upon his character. His mother's hard lot in life was fully presented to him. It aroused his sympathy, and he expressed himself as willing to do anything to lighten her burdens. When it was forcibly presented to him that having a pickpocket for a son would be even a greater tragedy to her than having a drunkard for a husband, he blinked in amazement and blurted out, 'Why, I won't ever beat her like him. You don't get drunk when you are a pickpocket.'

"As the most convincing proof of his mother's future agony, in case he became an adult pickpocket, the mother was requested to come to the office, and in his presence the matter was brought up. The poor woman burst into tears and hoped that death would be good to her and take her away from the world before she witnessed any such unfortunate ending of her eldest son.

"Well," said the boy magnanimously, wiping the tears from her eyes and patting her heaving shoulders, 'don't carry on like that. If you want to die if I pick pockets, well, all right then, don't die, and honest to God! I'm going to try not to do it.' Then he shrugged his small shoulders in surprise. 'Funny' he ejaculated, 'that she didn't get fits before. She knew I was doing it all the time, and she didn't want to die before. Guess she's tired of them beatings.'

"He responded very favorably to the normal, wholesome influence of home thrown about him. Good food, early hours and healthful recreation had excellent results upon his physique. He gained in weight and seemed stronger. He was allowed to spend much of his spare time with the fireman and other employees in the building, of whom he was fond. He frequently visited the kitchen and assisted the cook in peeling potatoes, paring vegetables and sharpening her kitchen knives. . . .

"In school he won the monthly prize given by the principal to the best student of the ungraded class, and of course was fêted downtown and taken to a theatre. He enjoyed the treat immensely and remarked, 'Say, it's bully to be a swell guy.' In three years he reached the Sixth Grade, and as he had manifested great interest in the printing plant, and had actually been one of the leading printers on the monthly publication of the Home, it was decided to permit him to take up printing, with the view of turning his avocation into a future trade for him.

"He was offered a mechanical training in a technical school, and joyously wanted the opportunity, till he was informed that he would have to be graduated from the public school, in which he still had two years' work before him. He hesitated and avowed his aversion to continue schooling. 'What's the use?' he asked, 'I'll never be a teacher anyhow, and besides, I don't want to be a teacher and bother my head with lots of stupid kids. I'd rather anyhow be a printer and make money doing good jobs.' As these jobs were decidedly to be preferred to his former 'jobs,' he was encouraged at the vocation he had selected; and on his sixteenth birthday, he announced, 'Now I'm ready to start in the world for myself like Benjamin Franklin.' With the latter as an example and guide, there were no further doubts entertained about his future.

"He had not taken kindly to games and sports, but had manifested a rather tame interest in the Scouts, which, after a while, became stronger; and after a year had passed without any outbreak on his part, he was permitted to join the Scout Troop. Returning from a hike one day, he complained that he felt unwell, and came down with influenza, which was then ravaging the city. During his illness he was given every possible care and attention, for which he felt both gratitude and amazement. 'Say, partner,' (it had become partner instead of 'pardner'), 'you know, I've been thinking an awful lot while I lay here. Everybody has been so good to me and been doing and making things for me, and I giving them so much trouble and bother, I guess it pays to be good; I don't suppose anybody would care whether a pickpocket lived or tossed the bucket. I guess no pickpocket for me ever.'

"Some time before, his younger brother had been admitted to the Home, and was now duplicating the elder's former exploits. He was genuinely grieved and concerned about the boy's delinquencies, and would frequently argue and plead with his brother to behave himself. Often, he took the law into his own hands, and administered a beating to the culprit, who would calmly assert, 'Aw, chee, I'm not badder 'n you were.' This never failed to enrage him, and he would expostulate long and volubly. He would then come into the office, sad and

weary, and would remark hopefully, 'Well, you see he is very young and has no sense. When he gets older, he wouldn't be so foolish.' He was the Big Brother assigned to the boy, and it may be said for him that he performed his duty most conscientiously and faithfully.

"It was the printing instructor who announced that the boy was able to work as a full-fledged printer, and it was he who assisted him to procure his first job as a printer's assistant. He earned a small salary for several months, and was retained at the Home till his earning capacity would permit him to return to his own home and assist in the support of his mother. Before he had been employed a year, he was earning \$15 a week.

"'Good-bye, partner, thank you!' he said to the Superintendent when the latter parted from him.

"When he left the Orphanage, he had \$200 that he had saved from his salaries, and he informed his mother that 'now good times are coming for you.' He sought and found a small apartment in a better neighborhood, undertaking to pay the rental himself; purchased some new furniture, which was sorely needed; and informed his father that now things would be changed and, if he wanted to remain at home, he must simply give up drinking.

"The father, frightened and greatly intimidated by the determined action of his oldest son, promised. Fortunately for him, as well as for the members of his family, prohibition coming into effect, he was perhaps better able to keep the promise he had been forced to give. Also, the son took it upon himself to see that the father was employed at his trade of carpentering, with the happy result that the mother was able, for the first time in her life to realize her hope of a home.

"In March, 1922, a letter received by the 'pardner' from the boy, stated that 'things were just swell.' In view of the fact that he was now employed in a printing-shop, the boy was in receipt of a higher salary, and asked his friend whether he didn't approve of his contemplated plan to keep his father to the straight and narrow path, by offering to purchase a home for the parents.

"'You see,' he writes, 'my old man now sees that he made a big mistake all his life and wants to be a man now. If he'll know that I stop paying for the house the moment he breaks his word, I guess that will keep him right, don't you think so?'

"He has been living at home, giving his salary to his mother, and trying his utmost to create and maintain a home for the benefit of the entire family."²⁴

Changes in Reformatory Methods. A great change is coming over the juvenile reformatories. Once it was believed that what was needed was a carefully regulated régime in which the child would by almost constant repression and suggestion be taught habits which would stick after release.

²⁴ Drucker and Hexter, *Children Astir* (Cambridge, Mass., 1923), pp. 193-201 (Reprinted here by special permission of Harvard University Press).

Better understanding of the circumstances and individual characteristics which account for the delinquency has led to a change of treatment. Says one of the leaders of the new and better way.

"After all, what is a delinquent girl, and what is necessary to correct her in a state institution? Let us take for example a young shop-lifter. She is sixteen, as tender-eyed as Leah, with an expression of innocent freshness. Physically she is normal, mentally she is up to grade. For four years she has stolen from neighbors and shops, her thefts amounting to hundreds of dollars. Once she accused a man of good reputation of taking advantage of her. Court and community were deceived by her tale. Finally she is committed to a state school. Careful study uncovers her history: her parents married young; they were mismatched and their religion and marital relations were subjects of constant dispute. The girl slept in the same room with her parents. Finally they were divorced and the girl went with her mother who was so excellent a housekeeper that she made the girl remove her shoes on entering the parlor. At the age of twelve she commenced running away and stealing. Shy, secretive, full of fancies, what institutional program would restore this young girl's mental health, or unburden her mind of its load of hidden impulses? To teach her to cook, wash, sew and do gymnastic exercises would not be enough. No amount of training in useful habits would correct her stealing. Nor could the problem be solved in a laboratory. She must be reeducated to life. The whole matter of sex must be reinterpreted to her. To the credit of our institutions in this country we may say that in at least four of our state schools her problem would be understood and successful treatment carried out."²⁵

This change in the conception of what the reformatory should do for the delinquent is well stated by the same author as follows:

"1. Care, custody and discipline should be as nearly as may be, that which would be given by parents. Welfare of the child is the reason of the commitment.

"2. Behavior of the child must be studied as a thing caused. Treatment, or adjustment, is a scientific process.

"3. The child is an asset to the community and unless handicapped by irremediable mental or physical defect should be restored to the community.

"If one were asked to sum up in a phrase the background idea of correctional institutions for girls in this country, it would be, not punishment, nor discipline, but 'welfare, adjustment and education.' The strictly modern institution is a composite of school, home, workshop, hospital and laboratory, and its plant and entire atmosphere express its goal, as reeducation and the adjustment to normal life of the girl whose parents and whose community have failed her."²⁶

²⁵ Van Waters, "Where Girls Go Right," *The Survey Graphic*, I, 362 (June, 1922).

²⁶ Van Waters, *loc cit*, p. 362.

What are some of the results of these more recent experiments? Let the following stories of two such girls answer:

"Eve had spent seven years in state institutions. For several months she was in a school for the feeble-minded and was often confined in a straight-jacket. By merely rolling her eyes she could strike terror into the hearts of matrons. A new superintendent came to the state school. Eve is now in a city telegraph office in charge of an important division. The mystery? String beans. The new superintendent found the girl getting ready for a tantrum. She led her to the cellar where hundreds of rows of monotonous canned stringed beans were waiting the winter, and said, 'Eve, I am dissatisfied with these vegetables; they are so ordinary, so poorly done, almost any canning factory could do as well,' and the superintendent sketched her view of a state school as a vast center full of new industrial ideas and even beauty. Eve warmed to the project. Under her leadership glass jars replaced the cans, strips of red peppers alternated with the jade and ivory colors of the vegetables; there is undoubtedly poetry in vegetables and Eve realized it."

"Helen, aged fifteen, had run away from three institutions, had bobbed her hair, wore boy's clothes, smoked, drank and beat her way on freight cars. She had an irresistible sense of the comic and she had gifted hands. In the Kansas State School she was set to making original dolls. She made them of cloth, of wood, and of paper. Their faces resembled those of the people she had met: porters, policemen, waiters, tramps, Japs, jugglers and matrons. She made rabbit dolls with human faces. Gradually as she sat day after day in her discipline room, for her language made segregation necessary, her dolls began to have a commercial value. She 'found herself' and later when she was put in charge of a kitchen department her only gesture of independence was to hang a sign, which I am glad to state remained unmolested.

"'NO SLANG HERE BY HECK'" ²⁷

ESSENTIALS OF MODERN METHODS

Name of the Institution. Once institutions for delinquent girls were called Magdalen Houses, because most of the female delinquents were sex offenders, while those for boys were called "reform schools." Experience showed that such names stigmatize the inmates. Consequently the current practice is to call them training schools. Their real purpose is still reformation, but the emphasis is upon development by training. While in greater numbers than in early days these institutions are receiving those who by reason of defective intellect and deranged emotional life cannot be dealt with by probation and other methods since devised and therefore at the present time these institutions are getting a more hopeless class than in

²⁷ *Ibid*, p. 362.

former years, yet even some of the more difficult cases may be trained for adjustment to a life in free society.

Changes in Architecture. In the earlier institutions these reformatories and Magdalen Houses were prison-like structures with bars, cells, and high walls around the building. Now the tendency is to substitute simple cottages numerous enough to provide some classification and therefore greater individual treatment. Frequently these modern institutions are adaptations of buildings designed for quite a different purpose. For example, Samarcand Manor, which was taken over by North Carolina as a training school for girls, had once been a fashionable experimental private school for boys. Its great fireplaces, sleeping porches, and rustic furniture are retained. The beautiful rooms are used as classrooms for these delinquents. Others have been developed out of old farm-houses. Examples of this type are Sleighton Farms, Pennsylvania, the institutions in Connecticut and Kansas, Bon Air in Virginia, and Clinton Farms in New Jersey. The school for delinquent girls of Los Angeles County, California, now called El Retiro, was originally a private sanatorium for wealthy convalescing tubercular patients. The Minnesota institution at Sauk Center has gone even further with the cottage system and has a series of village communities so built as to segregate different classes. One of these villages, called the Mother Goose Village, is composed of a group of bungalows for young mothers and babies. It has large playgrounds and many sleeping porches. Another group is composed of cottages occupied by difficult or psychopathic girls. Many of these cottages have been built by the girls themselves under the supervision of a carpenter. The attempt is made to provide in these institutions the outward setting for the individual variations found in the gathering together of such large numbers of difficult human material. In this connection the interesting observation has been made that the institutions which are most simply constructed are doing the best work. One other advantage of this plan is that the State does not sink all of its funds in brick and stone but leaves something to be spent on the training of these human beings. As one superintendent put it, "The tendency is now not to build any further monuments to delinquency."²⁸

The Superintendent. While occasionally in the early days of the reformatories a wise superintendent like Mr. Wells of the Boston House of Refuge was to be found, in most cases the superintendent was looked upon as the warden of a juvenile prison. Now the tendency is to find a superintendent who will be primarily an educator and a wise friend of youth. As an educator he must understand delinquent children. His educational

²⁸ Van Waters, *loc. cit.*, p. 363

industrial workers. The remainder had received their training in the institutions. The tendency at the present time is to have as few men connected with the girls' institutions as possible.

Diagnosis of the Inmates. As the result of the application of modern science to the problem of conduct, diagnosis of each individual case is looked upon as primary in importance. In the early institutions the child who was sent to a reformatory brought with her very little information upon which a diagnosis of her difficulties could be based. Sometimes a physician's certificate of freedom from disease accompanied the girl. In all too few cases, even yet, is a record showing more than physical examination available to the institution. Some few courts send the results of a mental examination with a record of the child's mental age and a brief summary of the social facts ascertained by the court or social worker connected with the court. The tendency, however, in our best institutions is to get all the information available which will throw light upon the roots of the child's difficulty. Consequently, when the delinquent is received she is usually placed in a reception cottage, where a thorough examination, physical and mental, is made in an interview which not only brings out the facts of her history but also throws light upon her reactions and defects before the attempt is made to start the training. Experience indicates the importance of this measure, as otherwise the new arrival is housed with parole violators, misfits, and psychopathic and diseased inmates and at the very beginning gets a wrong impression of institutional life. In a number of the institutions for girls such receiving cottages have shown their value. Among these are seven studied by Miss Van Waters, including Grand Mound, Washington, at which the receiving cottage is called Rainbow Cottage and is beautifully equipped; Sleighton Farms, Pennsylvania; and Clinton Farms, New Jersey. The institution for girls at Waverly, Massachusetts, makes use of the skilled services of the laboratory of the Judge Baker Foundation in Boston. El Retiro, the Los Angeles County institution, uses the Juvenile Detention Home for such study. Where study is made before or upon reception, a program of treatment can be blocked out in advance that will save much time and obviate wrong starts. At the Gainesville, Texas, institution Miss Smith, when superintendent, placed the new girl with the most successful girls in the school, who became big sisters to her.

The tendency in the best institutions is carefully to study the new arrival and also to have frequent conferences of the workers as the training develops. In this way frequent individual attention is given by all who have had opportunity to observe her. In Ohio the Bureau of Juvenile Research

is available not only to the courts which commit children to the State institutions but to the institutions themselves in difficult cases.

Medical Attention. This is especially needed in the cases of delinquent girls. As one recent writer has said: "The girl delinquent comprises as many physical problems as disciplinary ones; the two go together." Fully 75 per cent of delinquent girls suffer from some form of physical defect. An increasing number of the modern institutions are providing facilities for giving medical and surgical attention to the physical needs of these young delinquents. In a recent study of thirty institutions for girls by Miss Van Waters, it was discovered, ten have special hospital buildings and seven are doing medical work equal to the best in the country. The institutions where the girls are permitted to keep their babies are doing the best medical work.³⁰

The Age-Group. While the law regulating the ages received at these reformatories varies among the different States, the usual rule is that juvenile delinquents may be received up to the age of sixteen. In some States, however, which do not have women's reformatories, older girls are received into the juvenile institution. The same is true of the institutions for boys. Many of the schools are permitted to retain jurisdiction over their wards until they are twenty-one. Sometimes the inmate stays there until he is of age, but the tendency now is to train the children about two years, as experience has shown that on the average they will learn practically all that the institution can teach in that time and further training should be carried on under parole. A sound reason for not keeping the juvenile in an institution too long is that he becomes *institutionalized*.

Daily Routine. Consider the daily routine which some institutions regard as more or less necessary. In thirty girls' institutions recently studied, it is more or less standardized. In one institution the girls get up at 5:30 and scrub, work in the laundry, the dairy, and the bakery until 6.30, when breakfast is eaten in silence with a matron on guard. At seven o'clock some classes start, taught by the matrons who have been on duty the night before. No talking is allowed among the girls while they work. The hours of work in this institution are from eight until twelve and one to five, with no recess except the dinner hour at noon. After supper the girls are locked in their rooms. Aside from an occasional evening entertainment this deadly routine goes on all the year, with the exception that three times a year duties are changed. The girl who has been working in the kitchen now goes to

³⁰ Van Waters, *loc. cit.*, pp. 366-367

some other kind of work. Chapel services and an occasional riot are the only breaks in the monotony.³¹

This, however, is a picture of one of the older types of juvenile reformatories. Increasingly in these institutions the daily program is being broken out of the dull monotony of this routine and a healthy interchange of work, study, play, and self-expression is to be found. In the best institutions the daily program is such as one can find in a wholesome family. The groups for study and work are small; conversation is carried on as in a family; the tasks are made as interesting as possible and there are hours for spontaneous activity, play, and plenty of restful sleep, no attempt to repress emotion and noise; and beautiful surroundings with books, pictures, music, pets, and wholesome company. The attempt is made to render these institutions much like the best private boarding schools for boys and girls.³²

The description by an English visitor of what she observed in the Sleighton Farms School for Girls in Pennsylvania will perhaps indicate the impressions one of our best institutions made upon a keen observer:

"In America I have only seen a few places of detention, and among them were the best and the worst I have seen anywhere.

"But the Sleighton Farms School for girls and young women is a model of what an educational establishment for young women could be if the 'prison' element were taken out of it. I do not think discipline is absent from this institution by any means, I think there may be, in one sense, more than even we are accustomed to. . . . But I visited this place accidentally on a holiday, and saw several hundreds of girls giving a party to their friends, and amusing themselves. Boys from a neighbouring school had brought a band. There were field sports, and exhibitions of cookery, and sweets and needlework, and prizes for these, and a delightful procession in fancy dress took place in which the girls' fancies had free play. The tone of the institution was—well there *was* a tone and there were good manners, and there was spontaneous gaiety, and interested play.

"All the girls were in pretty frocks, and the houses they lived in, and all else, bore more relation to a high class school in this country than to a reformatory. Again I envied the conditions for prisoners at home; there was so much that mitigated discipline, and that provided outlet, and conducted to development. They were prisoners—but could, and some did, go on from their place of detention to colleges and universities—places that I have known Borstal girls deeply interested in hearing about."³³

Ideals and Methods of Training. The methods of training the children in a juvenile institution for delinquents are most important. Often

³¹ Van Waters, *loc. cit.*, p. 367

³² *Ibid.*, p. 368

³³ Gordon, *Penal Discipline* (London and New York, 1922), pp. 219-221

they are children who have not adjusted themselves to the common schools. A large number of them are mentally abnormal. Most of them are from families which have not had high educational ideals. Many of them are emotionally unbalanced. An unusual number are from the families of foreigners.

The *teachers*, therefore, in our best institutions are, and must be, men and women of the highest qualifications for the difficult task. They are people of versatility, originality, resourcefulness, and real inspiration. Since many of these children are backward, have lost interest in school, or never had an interest, and all of them have a background and experience that has brought them to grief, poorly trained and equipped teachers do not succeed. Moreover, the teachers believe in these children, and are picked with reference to their ability to stimulate such children to interested activity.

Since most of these juveniles will have to work for a living, there should be *training which will prepare them for a trade or occupation* suited to their abilities. In most institutions whatever work of a useful nature the children do must have educational value. The institution is engaged in making men and women, not shirts or shoes.

Since farming is one of the occupations which, if properly conducted, has real educational value, the best institutions now have fairly large farms connected with them. The care of stock, the planning of crops, the growing of useful things in gardens, and the many useful activities around a farm provide in an unusual way opportunities for nature study, for interesting activities which have educational value. However, even here the work can be made so uninteresting that the children will get a decided distaste for the farming process unless those in charge know how to make it interesting and educational.³⁴ In the best institutions, aside from helping with the chores around the stock, the gardens provide the chief educational opportunities.

For the girls the institution provides vocational activities suited to their needs. They go through the various household activities, rather than stick to the one at which they give the greatest satisfaction to those in charge, in order that they may learn how to do the various kinds of domestic work. In addition it has been found that girls do well with chickens, pets, calves, and other domestic animals. For both boys and girls the young of animals often provide that mystic touch which awakens for the first time in their breasts an unselfish sympathy and love for others. Often the most hardened will respond to such stimulus. Most of the girls marry within a few years

³⁴ Van Waters, *loc. cit.*, p. 370.

after being discharged; therefore they should be prepared to care for a family in a household. Others of them, especially those of low intelligence, will get places as domestic servants, in spite of the moral hazards, and should be taught how to keep house.

The problem of *moral education* is the most pressing and difficult one confronting these children. Their moral habits which account for their being in the institution must be given attention. Whatever may be done by way of formal instruction in good conduct—and certain aspects of the matter may be dealt with formally—the most important part of their reeducation morally must come about through their contacts with the teachers, house-mothers, and house-fathers and through the ideals of fellow-students. In this connection the wisest superintendents organize Boy Scouts, Girl Scouts, Big Brothers, Big Sisters, and similar organizations which bring to bear upon the newcomers in the institution the new-born ideals of those who have been there longer. Living in the close relationship of an institution these children are subject to a social pressure which is often lacking on the outside. What the nature of that social pressure shall be depends on the character and wisdom of the officers of the institution. It is their business to see that the dominant ideals are those which mold the characters of the children into desirable form. The illustrations in this chapter concerning the treatment given by a private orphanage show how skilfully a good executive can manage to displace a bad influence by a good one.

The officers of the institution are perhaps the most potent influence in the moral education of the children. The superintendent who by example and wise talks can suggest new points of view, can subtly suggest rewards for good conduct, or can discover and play upon the elements of the child's better nature can exercise a most helpful influence on the wayward boy or girl. Moreover, he can make goodness contagious. Not only does he inspire the children with whom he comes in contact, but his influence and example touch to living flame the sometimes weary subordinate officer and teacher.

One aspect of the technique of changing a boy's habits is shown by the following description of the treatment of Billy in an orphanage which has been very successful in handling some rather difficult delinquents. Billy, who had heart disease, came to the institution with a bottle of smelling salts, a thermometer, and a bottle of medicine. He had developed a bad case of "enjoying his misery," a situation not confined to little boys. After a course intended to build him up physically the subject of school was broached as follows:

"The week before school reopened, he was called into the office

"Now, sonny, ready to go to school?" he was asked

"His face, somewhat rounder now, and decidedly more healthy in appearance, took on one of his old-time tragic looks 'I'll get sick again,' he threatened.

"We'll have to look out for that But we also have to look out that you become a smart boy and learn how to read and write well, and get a chance to be a great man like your cousins, the doctor and the professor."

"There was no answering gleam of ambition in his dark eyes 'I don't want to go to school,' he said, 'I want to stay home and play with the dogs and the bunnies'

"But the dogs and bunnies are not going to teach you how to read, write and count What will you do when you grow up?"

"I'll keep a store, like the bird man on Broad Street, and have lots of animals," he replied.

"Then how about starting your store right now, by being allowed to go to the bird man and pick out an animal, all for yourself?"

"His face flushed with joy and his eyes became bright. 'Oh, can I?' he questioned eagerly

"Yes How much money have you in the bank?"

"Greatly excited, he almost ran out of the office, and returned in breathless haste a moment later, with the pass-book issued to the depositors of the Children's Bank 'See! Here's my money!' he cried earnestly.

"How much is that?"

"His face fell. 'I—I don't know how—to make it out,' he stammered in confusion.

"Then how will you know what to pay the bird man?" he was asked

"His eyes brightened. 'I'll give him my bank book and tell him that's all the money I been saving since I came here, and tell him to take what he wants,' he replied eagerly.

"His faith in the bird man was evidently strong 'Suppose the bird man tells you that he would rather receive bills instead of the bank book for the dog, what will you do then?"

"For a moment he looked puzzled, then nodded his head as if agreeing to the bright thought that had occurred to him. 'I'll go to the bank and get the money and give it to the bird man of course,' he stated

"Let us suppose that the bank makes a mistake and gives you less money than you are entitled to—what then?"

"Do them banks make mistakes, too?" he queried, his eyes large in astonishment

"Sometimes You know you have to count the money you put into and draw out of the bank," he was informed

"Ain't it funny that them bank men don't like school, just like me?" he remarked

"To avoid treading on dangerous ground, a question instead of an answer was given him.

"How are you going to know whether or not you receive the right amount of money your book calls for?"

"He replied with a hopeless shrug of his thin shoulders

"The importance of attending school having been forced upon his consciousness he was finally permitted to go to the store, in charge of his monitor, who had provided himself with the necessary bills, to the boy's eager-eyed interest. Soon he returned, all smiles and happiness, hugging a tiny puppy under his coat, because, as he explained, 'That big wind will make him catch his death of cold'; and he held out the squirming little creature with admiring affection. 'J'ever see anything so bu-too-ful?' he cried in his ecstasy.

"He also submitted the information, after his joy and pride in his 'dog' had become more normal, that if it hadn't been for the monitor, he shouldn't have known how to purchase and pay for his pet; so he felt it incumbent upon him to heed the advice given him by the older boy, 'to go to school and learn something.'

"In the months that followed, he learned many things, though very slowly and with apparent difficulty. His mental capacity was below his age, but he plodded along steadily and faithfully, presenting none of the delinquencies of his previous school record. His deportment was good, and he seemed desirous to keep up with the work of his class. As his health was still the first consideration, he was permitted to continue his slow progress in his school-work, no effort being made for more rapid progress.

"Meanwhile, at the Home, his life was undergoing more radical and novel changes, which were to affect his habits and conduct till the metamorphosis of his character was completed. Mingling more freely with the boys, he became interested in boyish activities hitherto unknown to him, and actually began to enjoy the flying of a kite and a game of marbles. He even learned to emit a cheer, at first half-hearted and feeble, then strong and lusty, when his favorites excelled on the baseball diamond, forgetting to feel his heart for any after effects.

"The smelling-salts were doomed when the boys started the derisive question, 'How's the smeller, Billy?' A few days later, when the smelling-salts had not been in evidence, and speculations were rife concerning the hitherto ubiquitous bottle, Billy marched soberly into the office and very gravely put a small packet wrapped clumsily in newspaper on the desk. 'I want to send them for my momma,' he announced.

"'What are they?'

"'My smelling-salts for momma to smell, and my thermometer to take her temperature,' he replied with a sad gravity, a doleful shake of the head

"'Why are you sending them to your mother? Don't you want them any more?' he was asked

" 'I don't know,' he replied thoughtfully. 'My temperature is normal all the time—and—and the boys laugh at me' He brought out the last bravely, swallowing the lump in his throat manfully, though the tears stood in his eyes 'I—I can't any more look in the looking-glass and stick my tongue out to see if it's coated—they make fun of me—so what's the use of them things?' he ended bitterly.

"Asked how he felt since he had discarded the medicine, smelling-salts, and thermometer, he looked up and seemed for several moments to be thinking. Then, 'I got a lot to do and sometimes haven't even time to see how my heart is going,' he answered, reproach in his voice. After which, he secured wrapping paper, and making a neat package of his medical paraphernalia, laboriously scrawled his sister's address thereon, and sent them to her, with the advice to 'keep them for momma.'

"He continued to attend school for the next few years, and while his conduct presented no difficulties, his scholarship was only fair at its best, as his mental faculties remained sluggish. He was compelled to apply himself intently to a subject, and it was only by dint of extreme endeavor and frequent coaching that he was able to make his grades even as slowly as he did. His concentration was extremely poor, but his efforts were undeniably painstaking.

"The boy's mind, though needing constant encouragement and assistance in its development, was not feeble, and later, it was noted, that, as his health improved, his mental faculties became brighter. As he grew more of a boy, and less of an invalid, he became more cheerful and was decidedly happier. His pets, of which he accumulated a fair number, assisted him greatly in acquiring a more normal aspect of life, as they took the important places the thermometer and smelling-salts had previously occupied in his mind.

"In time, his face lost its tragic expression. While he remained delicate in appearance and in constitution, for nearly three years he had no real illness, and seemed fairly on the road to a normal boyhood. Gradually, also, he acquired a fondness for the manual training shops, in which he spent several hours every week, and became interested in the Boy Scout activities, in which he frequently participated. His happiness, however, lay in his fondness for his dumb pets, whom he loved and cared for with the utmost untiring devotion. The first book he himself read from cover to cover, and with complete enjoyment, was one dealing with animal life, and his ambition to have 'a bird and all kinds of animals store' when he grew up persisted with him."³⁵

Such technique is characteristic of all good work with delinquent children.

Discipline. Closely related to the problem of education is that of discipline. Originally conceived as a method of securing order in the institution, discipline to-day is looked upon as an important means of moral education.

³⁵ Drucker and Hexter, *Children Astray* (Cambridge, Mass., 1923), pp. 94-97 (Reprinted by special permission of Harvard University Press)

The problem is how to get the child to adapt himself to the circumstances of life with the least possible application of force. Matters must be so arranged that he conducts himself in accordance with the conventional standards because he wants to do so himself. While for some children at certain times in their training the authority of another, perhaps of an older, person must be exercised on them, and often they must be induced to a certain line of conduct by the fear of certain deprivation of privileges or the infliction of other pains, as soon as possible these should be displaced by social motives. Their conduct should be molded by the subtler methods of social control.³⁶

In unpleasing contrast to such methods of discipline it has been stated that in half of twenty-eight girls' reformatories studied recently flogging is still practised, especially for running away and for sex perversions. Punishment by taking away the food, or limiting it, was found remaining in two thirds of the twenty-eight. Solitary confinement as a method of discipline is also used in some. Some form of segregation or "meditation" is reported to be almost universal among these girls' institutions studied by Miss Van Waters. There also remain other corporal punishments, such as cold-water baths, drugs which cause vomiting, playing a stream of water from a fire-hose upon the disturber, and tying up. Says Miss Van Waters:

"The offenses for which these punishments have been administered are for the most part simple: running away, refusal to work, impudence, passing notes, the smuggling in of candy, gum and cigarettes. Sometimes violence, fighting, obscene language, and perversions occur. In one institution the daily program of the group in punishment, some forty-five girls, or about 12 per cent of the population, was as follows: each occupied a small, barred room, the furniture of which consisted of a mattress, bedding, wash bowl and tin cup. At 7:00 A.M. the door was unlocked, and the girl permitted to wash and dress. Breakfast, consisting of milk and bread, was served and eaten in the room. From 8:00 till 11:00 the girl scrubbed and cleaned her room. From 11:00 to noon small squads of girls were taken from their rooms to polish the downstairs floors. In stocking feet, on their hands and knees, they pushed a great polisher over the immaculate floor, while a matron counted aloud. This was the peak of the day, the only outside contact, and the girls, with cheerful, flushed faces, worked eagerly. At noon they were marched back to their rooms and dinner was served, soup and potatoes, or stew. At 5:30 P.M. milk and bread was served. Some of the girls had earned the privilege of carpet rags to sew. There was nothing else done through all the day. These girls had committed minor offenses, 'sassing' chiefly. The serious offenses were punished by confinement in basement cells. Only one

³⁶ For a brilliant discussion of the efficacy and economy of these subtler methods see Ross, *Social Control* (New York, 1901).

of the girls was there for the first time. The minimum length of stay in the discipline cottage was three weeks, if a girl was sent there a second time, an additional three weeks must be served. Seventy-five per cent had been there four times. Evidently the medicine was not working, but the doctor kept up the treatment.”³⁷

Doubtless there are some unruly girls in these institutions who must be segregated. Mrs Smith, formerly of the Texas State School, had a girl who was locked up in a room because of a tantrum. She at once set about smashing all the furniture and using the pieces as weapons of attack and defense. She was given a work bench and some tools when she quieted down, and she was grateful for the isolation and the means of useful activity.

The psychopathic girl often causes trouble by her “spells.” Maggie was psychopathic. She was born of two religious fanatics and at the age twelve was herself a famous “girl evangelist.” She preached and went into trances. Then she became acquainted with a professional dancer and went on the stage. Because of her anti-social conduct she was sent to the State School at the age of fourteen. Here she set out to dominate the institution. She had emotional explosions when attempts were made to restrain her. As a result something like an attack of epilepsy developed. Many things were tried with her. The resourceful superintendent one day set up a tent in the yard, put Maggie there and told her that was her home. She took to it and proceeded to decorate it with the things she found in her walks. She caught a ‘possum in the woods and built a house for it. After a night in which Maggie became the victim of her imagination and developed a terrific fear, Mrs Smith had a fence built around the tent, put a padlock on it and gave Maggie the key. The girl now was very happy. In many another institution she would have been severely disciplined. The solution is all in knowing how to adapt the treatment to the individual.³⁸

Some day we shall learn that there is a way to handle these difficult children without resort to physical force. We shall probably not learn how, however, until we shall have set about training officials, instead of selecting them because they need a job or are outworn school teachers, who can be hired cheaply, or have been politically useful.

Recreation. In the old institutions for juvenile delinquents play was usually repressed. Fortunately, modern knowledge has taught us better. Some of the most constructive methods in rehabilitation and training in our best institutions are to be found in the use of leisure time. Not only are

³⁷ Van Waters, *loc. cit.*, pp. 374-375

³⁸ *Ibid.*, p. 375

there the ordinary games which children play and supervised athletics, but plays, pageants, folk dancing, musical entertainments, and commemorative festivals. A number of the institutions for these young delinquents have orchestras and glee clubs. Community singing has been introduced into many of them. In addition the boys and girls are organized into Boy Scouts troops, Girl Scouts, and Camp Fire organizations. In some of them, as at Samarcand in North Carolina, woodland hikes and camping trips are planned. While the institution does not endeavor to compete with the high-powered recreations to which many of the children have been accustomed and which in many cases have been concomitants of their delinquency, they attempt to provide recreations which are as interesting and much more constructive.³⁹

CONCLUSION

Our study of the institutions for juvenile delinquents indicates the necessity of such institutions. Not all delinquents need to have institutional life, but for some in such training schools lies the hope of their future.

The character of the institution and its usefulness depends almost entirely upon the qualities possessed by the superintendent and staff.

Every tendency in the best reformatories at this time indicates that such arrangements must be made in receiving the new inmates, in studying their characteristics and needs, and in directing their daily lives and activities that the treatment shall be adapted to each individual according to his needs.

Individualization implies necessarily the most careful case study of the individual as the basis of treatment. Reformation *en masse* is impossible in the case of the juvenile delinquent.

The treatment involves not only individualization with the play of a wise and strong personality upon the juvenile but also the formation of ideals and conduct habits by the impress of group ideals, stimulus, and inhibition.

For all except those who must have permanent custodial care, the institution is unsuited for longer than two years on the average. After that, parole should follow, with careful follow-up by trained workers to see that the plan for the continued development of the normal personality is realized.

In the best institutional treatment of the delinquent, as well as in the after-care on parole and in the diagnosis of his difficulties, every resource of modern science is used. Psychology, psychiatry, sociology, with all they can teach of causation and technique of suggestion and stimulation of ideals, are kept clearly in mind.

³⁹ Van Waters, *loc. cit.*, p. 370

QUESTIONS AND EXERCISES

1. Assume that you are superintendent of an institution to which is sent Polly S., described in Chapter XI. Describe in detail your treatment of her.
2. Describe in detail how you would handle Parker E., described in Chapter XII.
3. Outline the main essentials in a good juvenile reformatory.

CHAPTER XXVII

MEN'S REFORMATORIES

REFORMATION was one of the purposes in the establishment of the American penitentiary system. While that purpose was subordinated frequently in the development of the American prison system, here and there a voice was raised emphasizing its importance. That the reformatory ideal was not dead with respect even to the prisons is shown by the first constitution of Ohio, adopted in 1802. This constitution says, "The true design of all punishments being to reform, not to exterminate mankind."¹

THE BACKGROUND OF AMERICAN REFORMATORIES

The results obtained in American prisons did not satisfy those who held to the ideal of reformation. An increasing number of men in the United States were dissatisfied. They began to plead for more specific attempts at the reformation of the delinquent. We are quite likely to think that the reformatory idea as developed at Elmira was an entirely new thing in America. For at least fifty years in America those who had been devoting thought to the subject of the treatment of convicts had been considering methods and devising means of effecting their reformation. It was over the question as to whether the Philadelphia or the Auburn system had the greater influence in reforming the man that the great debate swung both in America and Europe for so long a time. Furthermore, there was no such thing as parole or indeterminate sentence until the time of Elmira; there was only pardon by the governor. Whether the governor should pardon a prisoner was determined theoretically by the conclusion as to whether prison discipline had resulted in the reformation of the convict.²

The report of Maconochie's experiments in Norfolk Island with the

¹ Article VIII, Section XIV

² Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), p. 231, see also pp. 161-162. It is strange that their interest in reformation had not been stimulated by what they observed of the work of juvenile reformatories. These institutions excited great hopes, and one would expect that they naturally would lead to the question of applying the same principles to older delinquents. However, there is not a scintilla of evidence that the juvenile reformatories suggested the reformatory for adults. See Robinson, *Penology in the United States* (Philadelphia, 1921), p. 122, note 1.

transported prisoners from England had reached the United States and the so-called Crofton system in Ireland had excited the admiration of some American students of penology.

In 1857, Ohio established what was called in the law the Ohio State Reform Farm, for any minor male under the age of eighteen who should "be found guilty of an offense or crime against the laws of the state." This institution ultimately became the Ohio Industrial School for Boys. However, at the beginning its inmates were made up of forty male youths selected from the House of Refuge at Cincinnati, the Ohio State Penitentiary, and the county jails of the State.³

In 1865 Mr. Frank B. Sanborn, inspector of prisons in Massachusetts, advocated to the General Court of Massachusetts a system based upon the principles worked out by Maconochie and Crofton.

In 1868 the recently formed Board of State Charities of Ohio urged the legislature to establish, alongside of the penitentiary on the one hand and the Reform Farm on the other, what they called an intermediate prison for young men, thus giving them a system of graded prisons and providing opportunity for the adjustment of discipline adapted to the three different grades of prisoners. In their scheme transfers were to be made from one to the other, based upon the criminal's general character and conduct as determined by a careful series of marks. This recommendation, however, did not find fruition in the legislature of Ohio until 1885, nine years after New York State had opened the first adult reformatory in the United States.

In the declaration of principles adopted by the first Prison Congress in the United States at Cincinnati, Ohio, in 1870, reformation was recognized as the special purpose of punishment. "The treatment of criminals by society is for the protection of society. But since treatment is directed to the criminal rather than to the crime, its great object should be his moral regeneration. Hence the supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering."⁴

This important document also urged a progressive classification of criminals based on character and on some well-adjusted mark system. It suggested that "rewards, more than punishments, are essential to every good

³ Barrows, *The Reformatory System in the United States; Reports Prepared for the International Prison Commission*, 59th Congress, 1st Session, Document No 459 (Washington, 1910), pp 173, 174

⁴ This declaration of principles is to be found in Henderson, *Prison Reform and the Criminal Law* (New York, 1910), pp 39-63. This is one of four volumes on prevention and correction prepared for the 8th International Prison Congress and published by the Russell Sage Foundation.

prison system." The prisoner's destiny should be placed measurably in his own hands. This document discussed the reformatory agencies: (1) religion; (2) education, (3) belief by the prison officers that men can be reformed; (4) ability to gain the good-will of the convict; (5) a generous parental attitude by prison officials toward the prisoners; (6) cultivation of the prisoner's self-respect instead of degradation; (7) the use of moral rather than physical force in prison administration, (8) "steady, active, honorable labor"; (9) the adoption of the most valuable parts of the Irish prison system, including "the more strictly penal state of separate imprisonment, the reformatory stage of progressive classification, and the probationary period of natural training"; (10) classification and grading of prisoners; and (11) abolition of the short sentence.⁵ This declaration of principles was the work of a committee composed of Dr. Wines, Mr. Frank Sanborn, and Mr. Brockway.⁶

THE ORIGIN OF AMERICAN REFORMATORIES

The New York State Reformatory. Dr. Wines, in 1862, had become the secretary of the New York Prison Association. This association became the agency through which public sentiment was created in favor of the first reformatory in the United States for adult males. The law was passed in 1869, and the institution was opened in 1876. The first superintendent and organizer of the institution was Mr. Brockway, who had shared with Mr. Sanborn and Dr. Wines in formulating the declaration of principles noted above. Mr. Brockway had been trained in prison work under Amos Pilsbury, one of the most distinguished prison wardens America has ever produced, both at the Connecticut State Prison at Wethersfield and also at the Albany County Penitentiary at Albany, New York. Following this training he had been very successful as head of the Rochester, New York, County Penitentiary and still later had developed some very advanced methods of treating prisoners at the Detroit, Michigan, House of Correction.⁷ It was Mr. Brockway who drafted the bill providing for the organization and statement of purpose of the reformatory. This plan was approved practically in the form in which it was drafted.

The essential points in the act under which the New York Reformatory was organized are

1. Limited to prisoners between sixteen and thirty years of age convicted for the first time

⁵ Henderson, *op. cit.*, pp. 39-45

⁶ *Ibid.*, p. 78

⁷ Brockway, *Fifty Years of Prison Service* (New York, 1912), Chaps. 2-6.

2. The limited indeterminate sentence ⁸
3. A classification or grading of the prisoners.
4. A marking system similar to that used by Maconochie and Crofton, providing credits to be earned by the prisoner as a condition of increased privileges or release from control based upon good behavior, diligence in labor and study, and results accomplished, and debits for derelictions, negligences, and offenses.
5. Parole based upon the marking system and upon a reasonable probability of the prisoner's good behavior if released

In addition to those elements provided for in the organic law, the management as experience suggested changes established in addition the four following features in conformity with the purpose of the reformatory.

6. Physical training.
7. Military training
8. School of Letters.
9. School of Trades.

Young First Offenders. It was believed when Elmira was established that if young first offenders were segregated from other prisoners, thus preventing contamination, reformation was more probable. In actual practice, however, it has been found that without a good finger-print and record system it is impossible always to identify the repeater when he appears for trial and that by the time many of these young fellows reach the reformatory they are thoroughly hardened in crime. Consequently these criteria of age and number of convictions as the basis of classification have no value.

The Limited Indeterminate Sentence. Here for the first time the theory was put into practice that the Classical theory of fitting the punishment to the crime instead of to the criminal is contrary to the experience of the previous hundred years. The pity is that the absolute indefinite sentence was not enacted as the framers of the law originally intended. The limited indeterminate sentence is only less evil than the definite sentence.

Grading of Prisoners. The grading of the prisoners was an attempt to classify within the institution in order to provide incentives to industry and good behavior and also to make easier the discipline of the institution. Experience has shown that there is some value in these grades. However, such a classification does not provide against the contamination of the man in one grade by those in another.

⁸ In the original draft of the bill Mr. Brockway had an absolute indeterminate sentence, but fearful that this would not receive the approval of the legislature, the evening before it was presented he added a limitation that the sentence should not be extended beyond the maximum term provided by law for the crime for which the prisoner was convicted and sentenced. Henderson, *Penal and Reformatory Institutions* (1910), p. 94.

The Marking System. Designed by Maconochie and carried out in Ireland by Crofton, the marking system not only provided an incentive to good work and good conduct but also kept intact some of the ordinary economic motives in free life. It is unfortunate that in most of our reformatories this system has been given up. If a wage system were used in the reformatories and prisons, the marking system might well be dispensed with. Moreover, experience has shown that it is somewhat costly to operate and with certain of the inmates such as some of the feeble-minded and reckless fellows it does not provide the stimulus expected.

Parole. Originally parole was based upon the marking system, which was supposed to indicate the progress of the men in preparation for discharge. Scarcely anything remains of the marking system except a record of disciplinary reports, for there has been substituted in the best institutions something of a case record, which if carefully carried out is really better than the marking system in determining eligibility for parole. Parole is one of the most important penological devices which has come out of the reformatory system as originally organized in this State.

Physical Training. The purpose of physical training was to build up young men who often came into the institution very much run down, or undeveloped. Unfortunately, in too many of our reformatories this ideal has been lost sight of with the turning of the reformatories practically into junior prisons. Nevertheless, the ideal has been of value in that not only in certain of the reformatories but also in an increasing number of prisons a program of physical training through recreation rather than formal gymnastics or calisthenics is being carried out.

Military Training. The theory back of military training when it was introduced into Elmira was that by teaching these men orderliness, instant obedience to orders, and conformity in mass movements to certain evolutions, new habits of personal bearing and of conduct would be built up and remain with the men throughout the rest of their lives. Except as it applies to certain of the military men, most of the elements in this theory have been exploded. We have learned that habits of real value in life are produced by doing the things we particularly like to do. For the most part military training has never been popular with the inmates of reformatories. In most of them it has been given up. While it may have some values for certain types of men as a part of the régime of the reformatory, on the whole it is a failure.

School of Letters. The School of Letters was introduced into Elmira as the result of discovering that large numbers of prisoners were illiterate or of very little formal education. At that time the theory was held more

strongly than now that education would solve the problem of conduct. As we have already seen in studying the factors of criminality, formal education operates chiefly through the superior economic advantages it supplies. We have learned perhaps as much in the reformatories and prisons as in the schools, of the inadequacy of formalized education. While a certain amount of it is necessary, the tendency is to make the education subsidiary to activities based upon the various interests of the men. Furthermore, since the discovery of so large a per cent of subnormal individuals among prisoners, it is appreciated that the methods of elementary education are not appropriate to the training of such adults. Consequently, the tendency in the most progressive of our reformatories and prisons is to introduce those methods of adult education which have been found effective outside.

Vocational Training. The introduction of the School of Trades in Elmira and later on in the other reformatories established in this country was based upon the discovery that most of these young men had no trade. The theory back of its introduction was that if these men were taught a trade they would be able to keep out of trouble after release from the reformatory. It has been learned, however, that only a certain proportion of those committed to reformatories and prisons can be taught a skilled trade. In the early days of Elmira great shops were built in which men were taught to carry on the activities in certain trades and then the products were destroyed and the next group of men would build them again. Such a program destroys the constructive interest which the men might develop in actual productive work. Consequently, the tendency at present is to endeavor to carry on vocational education in connection with industries of economic value within the institution. The endeavor is now being made also to tie up the productive activities closely to elementary education.

Moral Education. In addition to the religious teaching by the chaplains to be found in American prisons from a very early date, Mr. Brockway, the first superintendent at Elmira, introduced certain studies in the School of Letters which were supposed to help the prisoner to form his ideals and his conduct. Such subjects were ethics, sociology, and political science. The leading penologists at the present time, while not decrying such studies, are emphasizing moral development through recreation, educational classes, dramatic and other organized activities, and above all, the influence of the officers in personal contact with the youth.

Disciplinary Punishments. There was carried over from the old prison system the theory that certain measures had to be taken on obstreperous reformatory inmates to ensure order and discipline. Mr. Brockway was thoroughly committed to the theory that in certain obstinate cases a

good paddling was effective. It is said that on his difference with the Board of Managers on this matter his resignation was sent in. Denial of privileges was also used. The solitary cell was never used at Elmira but has sometimes been used in other reformatories. However, it can be said that the disciplinary punishments in the reformatories have been very much less scandalous than in the prisons. There is practically no difference in the means of discipline to be employed with reformatory inmates from those to be found in prisons. In either case the movement is toward less severe methods. The isolation cells at Elmira have been placed in a separate wing. Here were fifty-six large, airy, well-lighted cells cut off from the rest of the institution. It was discovered that putting the men in these isolated quarters together had a salutary effect upon their conduct. Other more positive methods are gradually being introduced, although in some of our reformatories serious charges have been made as to cruelty in the punishment of inmates.

GROWTH OF THE REFORMATORY MOVEMENT

The establishment of the New York Reformatory created a great deal of comment both at home and abroad. The establishment of reformatories by other States, however, did not take place rapidly for twenty or twenty-five years. By 1927, however, there were twenty adult reformatories for men in twenty different States. There was also one Federal reformatory.⁹

LESSONS LEARNED FROM REFORMATORY EXPERIENCE

A number of very valuable lessons have been learned from the experiment with reformatories in the United States.

1. The classification by age and number of convictions is an unscientific classification in that it rests on no sound theory as to the nature of the criminal or the results of experiment. The recent discoveries in psychology and psychiatry and an understanding of the relationships between physical condition and conduct have made clear that any classification and differentiation of treatment of prisoners must be based upon, not the crime they committed nor the number of times they have offended nor the age, but upon the nature of the man himself, determined by physical, mental, and social criteria.

2. The value of even the limited indeterminate sentence and of parole has been made so evident by this experiment that both these methods have now been introduced into prisons as well as reformatories.

⁹ *Handbook of American Prisons and Reformatories, 1929*, National Society of Penal Information (New York, 1929), pp. xi-xvi

3. Education of the proper character is as much needed for the inmates of prisons as the inmates of reformatories. This education must be such as will prepare one as adequately as possible for life. The education of prisoners is a problem of adult education differing only from other adult education in that it should be adapted to the particular types of men to be found among prisoners.

4. The somewhat softened disciplinary methods introduced first into the reformatories have shown that the savage discipline of Elam Lynds and similar wardens is unnecessary.

5. All prisoners, of whatever age or character, should be handled by a single authority within the State. There is no reason why the reformatory inmates should be handled by an authority different from the one which handles the prison inmates. Since there is no sound principle upon which we should separate the treatment of reformatory inmates and inmates of a prison, there is no reason why a unified authority within a State should not supplant other methods of control.

RESULTS IN THE UNITED STATES

Like every new invention for the better treatment of delinquents, the Elmira Reformatory and the ideas back of it early were hailed with great hope. In the early years of its history there was a tendency to claim an extraordinary percentage of reformation. As high as 85 to 90 per cent were the estimates given early in the history of the institution.¹⁰ Of those paroled during the fiscal year ending September 30, 1910, 81.6 per cent were probably reformed. Of the 19,810 indeterminates received during 1876-1910, 1,242 returned, of which number 1,164 returned from parole once, 70 twice, 6 thrice, and 2 four times. Of these 453 were re-paroled, 675 were discharged by expiration or transfer, or were pardoned, etc., and 114 remained at the reformatory.¹¹ The report for 1922 estimated, on the basis of a study of over 30,000 prisoners received since the institution was opened, that about one third came into contact with the law again and could be counted as failures.

¹⁰ Mr. Brockway in 1910 estimated that during the seventeen-year period after the opening of the reformatory, 81.9 per cent had not returned to crime. However, he points out that of the 3,723 upon which this 81.9 per cent is based, 475 were either discharged at the expiration of sentence or were sent out of the State. He estimates that these are doing well, although he has no evidence to prove it. *Fifty Years of Prison Service* (New York, 1912), pp. 325, 326.

¹¹ These figures, however, have little value, as every effort to ascertain carefully what becomes of the men in later years has failed.

In Ohio Mr. Leonard, at that time superintendent of the reformatory, estimated in 1912 that 65 per cent of the young men who go out on parole live free from crime and lead useful and successful lives as citizens. Another 25 per cent are weak in character and are very likely, under temptation, to become delinquent again. The remainder recommit crime of varying degrees and are either sent back to the reformatory or find their way to some other penal institution.¹²

In a study of the Pennsylvania Reformatory from 1900 to 1918, the estimate is made in the report of that institution that over 14 per cent of those paroled during those years violated parole during the year.¹³

It has been estimated that from 10 to 40 per cent of those paroled from the reformatories in the United States violate their parole within the period of supervision.¹⁴

The latest and most careful study of the after-careers of reformatory inmates has been made by Sheldon and Eleanor Glueck. They studied 510 former inmates of the Massachusetts reformatory. Five years after their discharge 80 per cent of them were unreformed as shown by the fact that they had committed criminal acts during that period. Thus, with increasing care in the study of the results of the adult male reformatories it appears that a very small proportion become good members of society. This sounds very discouraging; yet remember that during the period they were in the reformatory and on parole they were not preying upon society, that one out of five remains a good citizen after five years from his discharge, and that a much higher proportion showed good conduct for a part of that period. As far as could be learned, only 18 per cent of the Gluecks' 510 former reformatory inmates were in penal and correctional institutions throughout the country and another 7 per cent were fugitives from justice.¹⁵

When one considers the human material entering these institutions, the results of the adult male reformatories are not entirely discouraging. Consider the following facts.

The Elmira Reformatory originally was designed to treat only first offenders. In this respect it has been followed by most other reformatories established since. Yet in a study of 1,000 reformatory prisoners made in

¹² Annual Report of the Ohio State Reformatory for the Year Ending November 15, 1912, pp. 9, 10.

¹³ Report of the Pennsylvania Industrial Reformatory for 1917-1918, p. 25.

¹⁴ Ibid., p. 151.

¹⁵ Glueck and Glueck, 500 Criminal Careers (New York, 1930), p. 191.

1919, 707 of them, or nearly 71 per cent, had already served from one to ten previous sentences.¹⁶

In 1920 and 1921 in the Massachusetts Reformatory for Men, 33.6 per cent of the inmates were subnormal.¹⁷ In 1922 the Research Laboratory of the Elmira Reformatory examined 930 inmates received at the reformatory during that year. Of these 34 per cent were normal and about 64 per cent were subnormal.¹⁸

Since the courts are applying the suspended sentence and probation to all the more hopeful cases, Elmira receives only the more hopeless cases. Since at least 39 per cent (and the medical officers at the institution estimate it as higher) of all received are mentally defective and since a number cannot learn and, because congenitally lacking, cannot be reformed, the new superintendent in his report for 1911 suggested that there should be an institution to which might be sent those who are not amenable to reformatory treatment because they are mentally defective.¹⁹ Some of these are now sent to the new institution for mental defectives at Napanoch.

In order to give concrete expression to the attitude of some of these men after treatment at the reformatory, a few letters from the Elmira graduates will be in place:

"I am kind of glad that I was at the institution, and made my parole, as it sure has learnt me a lesson never to forget, and I can say that I am sure that I will not make a mistake again, and I am glad that I was stopped early, as I might have gone from bad to worse, and God only knows what my end might have been.

"Well, sir, I wish you would give my best wishes to Mr. Nash, Mr. Epsey, Mr. Gunderman and all other officers, that makes it pleasant for the boys and help regain their liberty, also my best wishes to all the boys, we can all make good, and it sure is a great relief to receive your 'final,' for which I thank you again, sir. If I am in Elmira I will call upon you, sir, and thank you in person."²⁰

"I am taking the opportunity of writing you to express my feelings toward your institution. I was sent to Elmira in 1917 and paroled in 1918. My offense

¹⁶ Harding, *One Thousand Reformatory Prisoners as Seen in Perspective* (New York State Reformatory, Elmira, N. Y., 1919), p. 5

¹⁷ *Annual Report of the Commissioner of Correction* (Boston, 1922), p. 71. Nearly the same proportion in 384 cases from this institution was found by the Gluecks (*op. cit.*, pp. 156, 157)

¹⁸ *Report of the Board of Managers of the Elmira Reformatory, 1922* (Elmira, N. Y., 1923), p. 103

¹⁹ *Report, 1911*, pp. 39, 40

²⁰ *Report, etc. (1923)*, p. 23

was grand larceny 1st. After my release on parole I worked in one of the large hotels in New York city until Oct. 1921. I then took a trip to Berlin, Germany, to see my mother and returned to New York city, March 1922. I wish to thank you and the other officials of your institution for the benefits I received while an inmate. I wonder at times as I think of my life before going to Elmira what might have happened to me or how low I might have fallen but for the training and advice I received while in Elmira. I can truthfully say my future life will be governed by that training and advice.”²¹

“I was sent to your institution Oct. 11, 1917, and was paroled Nov. 21, 1918, making a straight parole. I was told to report for 1 year which I did, and received my final discharge Dec. 26, 1919. At the time I was sent to Elmira I was a foolish young man, and had never given serious thought to my general conduct. While I was in Elmira I received such advice and training that lead me to realize how foolish I have been, and upon my release I went to work and have worked steadily ever since. I have married and have a little son 4 months old. I also have been in business for myself and made good. I average now \$45.00 per week. I can truthfully say that the time spent in Elmira under your supervision was of great value to me in shaping my future life. Wishing the best of success, I am etc.”²²

Here is a letter from a man who left the institution many years ago:

“New York, May 18, 1922.

“Your records will show that I was an inmate of your institution for two years (1889-91) as a definite, or government offender, and for this entire period I was a member of the stenography class—14 months in the all day session—four months in the afternoon—assistant instructor for the balance of the time.

“Since I left your place I have held four positions as stenographer. The fourth,—the one I now hold,—is with a machine and foundry company which I entered about six years ago as stenographer and typewriter. When I went with them they employed 350 men in their different departments. Since the war began they have increased their plant three times its former size and employ 1400 men (constantly adding to it), and from my past position I have been shoved along until I have full charge of time of labor and material in the machine shop (the largest of their plant) and with it went a salary that I wouldn’t have dreamt about five years ago. I am not the only one of that old class who has made good—there are four others located in New York city with whom I occasionally come in contact—and they are doing all that can be asked of them. In that class there were sixteen men (all day session) and if there are five making good in New York, it is rather a safe presumption to assume that at least five of the remaining eleven are making good in some other parts of the country—a pretty good percentage for any institution of correction to turn out. I might

²¹ Report, etc (1923), p 24.

²² Ibid, pp 26-27.

incidentally state that the rules and regulations of the reformatory at that time were enforced to the limit—and then some.

"The whole gist of the above simply points to one thing for me—where would I have been if I hadn't gone there and learnt what I did . . .

"While it isn't right for any man to offend any law, I sometimes think it was the best piece of luck on my part to have done what I did—not in the sense of committing the offense I did—but simply for the fact that I learnt what has repaid me fifty fold for the time wasted in my life"²³

THE REFORMATORY IN ENGLAND

In England the Borstal system occupies somewhat the same place as the reformatory in the United States. It stands above the industrial and reformatory schools and is intended to reclaim those who offend against the law between the ages of sixteen and twenty-one.

The system falls into two parts: (1) Borstal institutions in which young offenders between sixteen and twenty-one are given industrial training and other instruction and are subject to such disciplinary and moral influences as will conduce to their restoration and the prevention of crime. (2) The Borstal Association, a quasi-official body given a subsidy by the National Treasury, which gives after-care to boys and girls released from the Borstal institutions²⁴ The Borstal institutions constitute a half-way house between the prison and the reformatory for juvenile adults. These institutions are under direct government management. They receive the young adults for a period of not less than two years and up to three years for the purpose of reforming them. They also have a system of parole much as at Elmira. The striking difference is that no one is kept in the Borstal institutions more than three years.

This system was adopted in England as late as 1909 and has been modified in certain respects by more recent acts. It is so named because the first institution used for this purpose was located in the village of Borstal, where an old convict prison was transformed into a reformatory.

These institutions receive those:

(1) who are convicted on indictment of an offense for which they are liable to be sentenced to penal servitude or imprisonment, or

(2) who are summarily convicted and remanded to quarter sessions for an offense for which the court has the power to impose a sentence of imprisonment for one month or upwards without the option of a fine, and previously convicted of an offense or guilty of breaking the terms of a

²³ *Op. cit.*, pp. 30, 31

²⁴ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 410.

probation order; those of criminal habits or tendencies, or those who were the associates of persons of bad character. Male offenders may be released on what we call parole after six months' detention and females after three months.

The institution in England has been criticized in that the vocational training of the delinquent youth is interfered with by the fact that the reformatory schools for those under sixteen cannot keep the inmates after they are nineteen and the Borstal institutions cannot take them until they are sixteen. The period during which vocational training should be acquired is thus split up by two sets of institutions, with the result that neither can thoroughly teach any inmate a trade even though he be sentenced to the maximum term.

Again, it is generally admitted that chronological age as a measurement of physical and mental development is unreliable. It is estimated that fully 20 per cent of the cases sent to the Borstal institutions are border-line defectives with an average mental age of from thirteen to fourteen years.

Furthermore, only those of a character, state of health, and mental condition such that the offender is likely to profit by the instruction and discipline of the institution can be admitted. Consequently, those with physical defects,—the crippled, the tubercular, the epileptic, and those with defective hearts—cannot be received into the Borstal institutions.

Moreover, the institution is too new in the English correctional system to have established itself thoroughly in the minds of the committing magistrates. Frequently, therefore, lads over sixteen are often sent to prison when they should go to the Borstal institution. In addition to this fact, most of the offenders sent to the Borstal institutions are at first detained for some time in local prisons, with the result that they are contaminated by association with adult offenders.²⁵ This has led to the development in the prisons of a special juvenile adult class.

There are five Borstal institutions in England, four for boys and one for girls. Experience and the advance of knowledge in psychology and psychiatry led the English authorities in charge to provide for a careful study of the boys and girls committed to these institutions. Hence in the local prison of Wandsworth in London a separate department has been established as a reception prison for the Borstal boys. Here they are studied physically, mentally, and socially in order to determine what kind of training they should have and to which of the four Borstal institutions they should be sent. Here social workers have prolonged interviews with the lad, investi-

²⁵ Hobhouse and Brockway, *op. cit.*, pp. 410-415.

gate his history, and visit his home in all cases where it is possible. Recently because of the expense connected with giving each individual boy a careful study, mental examinations are now given in a group test with individual examination of those who have failed to reach a certain standard in this test.²⁶

When I visited these institutions in 1928, the three institutions for boys were those at Feltham, Borstal, and Portland. Feltham was reserved for lads who had been in prison, who had incurred only fines but who had broken probation and whose lives had hitherto been spent at home, and also for those who were mentally backward and unstable. To Portland were sent those who had failed at industrial and reformatory schools and had already been away from home for prolonged periods. The institution at Borstal received those who fell between the boys sent to Feltham and the ones sent to Portland. The old prison at Aylesbury and the Woman's Inebriate Institution at the same place were turned into the Borstal institution for girls.

In the institutions for boys there are five grades, although if the stay in the department at Wandsworth be counted and the release to the Borstal Association be included, there are seven. After having been studied in the receiving institution at Wandsworth the boy is sent to the Borstal institution best suited to his needs. There he enters into the first or ordinary stage for three months, or longer if his conduct does not warrant promotion. Then he goes into the second grade for three months and so on in each case. The fourth grade is called the probation grade. Here he has much greater liberty. Above that is a special grade in which again greater liberty is allowed until he is discharged. If, when let out on parole, he does not do well he is not returned to the Borstal institutions, but is sent to a department at Wormwood Scrubbs.²⁷

When I visited the institution at Borstal I found that the old prison buildings had been entirely replaced by modern buildings. To be sure there was still a wall around the institution, and the boy was met at the gate by a warden. However, there were four different homes or cottages, each holding about 100 boys, with a house father and a matron. Each house was divided into eight sections, with a monitor, a senior boy, at the head of each. A good deal of self-government had been introduced. In one of the cottages there were dormitories for sleeping, each of the sections of

²⁶ Gillin, *Taming the Criminal* (New York, 1931), p. 231.

²⁷ Sutherland evidently counts these two departments at Wandsworth and Wormwood Scrubbs as Borstal institutions. See his "The Decreasing Population of England," *Journal of Criminal Law and Criminology*, January-February, 1934 (Vol. XXIV, No. 5, p. 880).

boys having a space partitioned off to themselves. In the other homes each boy had his own cell. These looked more like prison cells. The governor at that time believed in the mixture of private cells and dormitories.

Moreover, the administration had endeavored to introduce competition in games, in standings, and in conditions of cells and sections, both between the sections in the same house and also between the different houses.

Each boy worked eight hours and attended classes two hours in the evening. Besides this there was time for recreation, dramatics, athletic matches, etc. Cups were offered in these contests for which the different groups worked.

There were industrial shops for production and training. All the work was productive, but such trades were chosen as would be useful on the outside. Carefully selected instructors were employed, some of them Oxford and Cambridge men.

There were about 400 boys in this institution at Borstal. They did all their own building and practically all the repair work about the institution. By good conduct a boy could get out in fifteen months and was then placed by the Borstal Association.

The spirit of the place seemed to me to be good. The governor made a good impression. He said he was frankly interested in making better boys. However, he admitted failure in some cases. He was an educator and not a mere prison man. He said that morals were taught by example and attitudes rather than by formal teaching.

In connection with the institution there was a 300-acre farm of poor chalk soil. The farming operations, however, were on a small scale. There were only six horses, fourteen cows, some pigs, sheep, and chickens. The governor believed that the wall around the institution was unnecessary.

There were some punishment cells in Borstal, but they were seldom used. The punishment workshop being used instead. There the few boys who needed punishment broke stone. Each punishment cell in the workshop was open to the outer air, but there were walls dividing it from the next one and in this open cell a boy being punished was put to work breaking stone in an iron pot set into the ground, with an iron stamper or crusher. It was hard work and uninteresting.

The Borstal institutions are frankly an experiment in which changes are being made which are believed to be improvements on the basis of experience in the past. One of the difficulties felt in connection with the institutions is the lack of proper industrial work.

In connection with the institution at Borstal, the attempt was made to introduce self-control. Those in the special grade, for example, were given

great liberty after they had taken a solemn promise to the governor to control themselves. In 1925-26, twenty-four of the lads in the special grade were allowed to attend the Municipal Technical School in the evening. Groups of the higher-grade boys went out for long walks with a leader and seldom made use of their opportunities to escape. For a number of years now large groups have been sent from the several Borstal institutions to camp. In 1925, eighty-two went from Borstal, 105 from Feltham, 131 from Portland, and fourteen girls from Aylesbury. These constituted the special grade in each institution. The camps are very successful. The expense for holding these camps was contributed by private individuals.

Recently in Portland at least the old method of segregating the ordinary grade and the intermediate A grade has been given up and instead the newcomer has been plunged straight into the life of the house. The experiment seemed to be promising.

Again at Portland a feature of the educational course has been the establishment of a discharge class into which were put all the boys who were within two months of the time of leaving.²⁸

Results. The same prejudices against the good influences of the Borstal institutions are to be found in England as are current in certain circles in the United States and for the same reasons, namely, that the successes are seldom heard from, while the failures are widely advertised. Many of the English prison wardens believe that the Borstal institution is the place for the manufacture of criminals, and some of the police express the same opinion.

However, when the figures are analyzed, especially the pre-War figures, which are taken as most reliable, it is shown that 64 per cent had not been reported as reconvicted and were satisfactory when last heard of, 84 per cent were unsatisfactory in their subsequent conduct, while 27 per cent had been reconvicted.

The percentage of successes seems to be larger for the young delinquents than for the older, as is shown by the fact that while those who are sent to the Borstal institutions under seventeen average 82 per cent doing well, those committed at over twenty years of age show only 45 per cent doing well.²⁹

The Reformatory in Continental Europe. In our sense of the term Continental Europe has developed no reformatories for men. The penolo-

²⁸ Report of the Commissioners of Prisons and the Directors of Convict Prisons, 1925-26, p. 53. See also Hobhouse and Brockway, *op. cit.*, Chap. XXVI, and Brockway, *A New Way with Crime*, Chap. VIII

²⁹ Hobhouse and Brockway, *English Prisons Today* (London, 1922), pp. 433-435

gists of those countries were not ignorant of the work at Elmira. Reports on Elmira were made at international congresses. Some were influenced by them.³⁰ But may not the advocacy of the Elmira plan by Lombroso, the founder of the Italian "Positive" school of criminology, then and for years afterward violently opposed by the penologists of other schools, have prevented a hospitable reception on the part of European leaders in penology? It is certain that except here and there little was done in the way of separate treatment of the young adult first offender. Europe attacked the problem later in her own way. France built separate institutions for this class of offenders. Perhaps the most famous is that at Fresnes. Here each prisoner works in isolation as in the old Pennsylvania prison. When they are out of their cells the prisoners don canvas face-masks in order that none may recognize his fellows. In chapel each man occupies a separate enclosed cell.

Germany has in some of the states separate institutions for first offenders, but in the smaller States the separation is attempted in the same institution.

Bolshevik Russia ignores the classification by youth and number of convictions, except as these factors throw light upon the individual's danger to society. Her classification is upon an entirely different basis.

EVALUATION OF THE REFORMATORY

So far as we are able to judge from a study of the results of adult reformatories for men we can say that:

1. The best of them meet a need which ordinary penal institutions have not met. They attempt to teach their inmates trades, to give them an elementary education, to bring to bear upon them moral influences, and to train them for good citizenship. The poorest are only another type of prison masquerading under a new name.

2. Where they have failed it has been due (a) to the attempt to apply the same methods to all classes of delinquents no matter what the differences in individual character, (b) to the attempt to change habit by mass treatment rather than by adaptation of methods suited to each individual, (c) to the maximum limit of the sentence; (d) to the character of the personnel; and (e) to the limits set by law on the parole period.

3. The experience of the reformatories has demonstrated the value of an indefinite sentence. They have shown that there is no danger that the correctional institutions will keep the men longer than is demanded by the safety of society. Their experience has unquestionably shown that the

³⁰ Gillin, *Taming the Criminal* (New York, 1931), pp. 166-168

limited sentence compels the discharge of some men who are not fit for free society.

4. The history of the reformatories has shown that parole, carefully administered, has value in the rehabilitation of the offender who has been properly trained and who has such qualities of mind and character that he can safely be released, but that an indefinite term of parole is necessary to secure the best results.

5. They have influenced the ideals and methods in many prisons. Says Mr. Leonard of the Ohio Reformatory on this point:

"The success attained by reformatories through the adoption of humane and educative methods has resulted throughout the country in a modification of disciplinary methods in the old line or ordinary prisons. In fact, the administrations of some of the prisons classed as state penitentiaries have gone so far in this direction that they surpass in reformatory value some of the more conservative so-called reformatories. The effect of the success of the reformatory methods has been even more influential in modifying public opinion and the attitude of the average man and woman toward prison administration. A quickened conscience and aroused public sentiment growing out of this agitation find expression in probation laws, juvenile courts, and other methods of reclamation of children and delinquent youth."³¹

6. They have stimulated the legal provisions for suspended sentence and probation which saves large numbers of offenders from the stigma of an institution sentence.

7. They have shown the necessity of treating delinquents both in the institution and on parole on the basis of a thorough study of their social history and of their physical and mental characteristics.

8. They have suggested the importance of a similar diagnosis before commitment. If it is important for the reformatory authorities to understand what conditions in the delinquent and in his surroundings account for his offense, how much more important that courts understand him in order to know to what institution to sentence him.

9. The experience of the reformatories has also raised the question as to whether the law should state what treatment should be given an offender or whether that should not rather be determined by a board of experts in psychiatry and sociology, while the function of the law should be to define criminality and define the functions of the board.

10. It also suggests that possibly the function of the court is merely to

³¹ Leonard, "Reformatory Methods and Results," in Henderson, *Penal and Reformatory Institutions* (New York, 1910), pp. 127-128

determine the question as to whether a given individual has committed the crime with which he is charged.

12. Experience with the reformatory has shown clearly that prisoners should be classified and segregated, not on the basis of kind of offense, number of convictions, or even age, but on the basis of the nature and personality of the individual as determined by physical, mental, and social investigations.

13. Finally, the experience of the reformatory has raised the question as to whether the public schools should not do much of the educational work which the reformatories at present are forced to do and thus prevent many of the tragedies which the reformatories are called upon to handle.

QUESTIONS AND EXERCISES

1. Trace the origin of the reformatory movement in the United States, showing what influences and examples in other countries contributed
2. Whence were derived the nine points in the system of the Elmira Reformatory?
3. How has the reformatory system influenced the conduct of ordinary prisons?
4. What features in the Elmira Reformatory were survivals of prison methods?
5. How do the Borstal institutions of England differ from our adult reformatories? From our juvenile reformatories?
6. What lessons as to the treatment of offenders have been learned from experience with the reformatories?

CHAPTER XXVIII

WOMEN'S REFORMATORIES

WOMEN delinquents have always been less numerous than men. Possibly that is one reason why the question of separate institutions for women appeared late

ORIGIN OF WOMEN'S REFORMATORIES

Salillas, in his *History of Prisons in Spain*, says that in the early part of the seventeenth century Spain had houses of correction for delinquent women in which a distinct reformatory and correctional purpose was evident. These were different from the workhouses which developed in Spain a little later and different from those which arose in other parts of Europe. Then about a century and a half later, after the galley system which had been in use for men was abolished in 1748 and prisons for men were established in which the reformatory purpose was emphasized, a society of women was organized in 1787 to assist in the reformation of delinquent women.¹

In the United States. In the United States Indiana was the first State which took steps to segregate the female from the male delinquents in the penal institutions. In 1869 the women of Indiana organized a movement for a separate prison for women. In 1873 the legislature of Indiana provided such an institution and had it open for the reception of women prisoners. This institution, separate from that for the males, was the first separate institution for women delinquents in the United States. In the beginning it was called the Indiana Reformatory Institution for Women and Girls. It antedated the next in time, that of Massachusetts, by four years. In 1889 the name was changed to the Reform School for Girls and Women's Prison. In 1899 the two departments were separated, one being called the Industrial School for Girls and the other the Women's Prison. Since then the Institution for girls has been moved to a separate site in the country and the Women's Prison has become in fact a women's reformatory.

In 1871 a movement was started to segregate the women in the jails of Massachusetts from the men. However, the only change made was that they

¹ Salillas, *Evolución penitenciaria en España*, reviewed by Sutherland, *American Journal of Sociology*, XXIX, 244 (September, 1923)

were put into a separate department in the jails. The matrons, however, who were in charge of the women, were subordinate to the sheriffs. In 1874 there were 650 women in the jails and houses of correction of that State. A voluntary association of women who had been aroused by this situation and for four years had been busily agitating for a reformatory induced the legislature in 1874 to appropriate \$300,000 to establish a reformatory for women that would care for 500 inmates. The institution was completed and the first prisoner received November 7, 1877. At first it had only thirty acres, but as time has gone on land has been added until in 1910 it had nearly 400 acres. In spite of the attempts in Indiana and Massachusetts to develop women's reformatories, the first modern reformatory for women was established in New York in 1892.²

In Europe. In Europe the women's reformatory movement has had even less development than in the United States. France has certain correctional institutions for women. These approach in purpose somewhat our reformatories for women. One of these, called a *Maison Correctionnelle*, was described in 1922 by an English woman. Its methods may be indicated by certain facts about it. For example, during the entire sentence the inmate was in cell-confinement; masks were worn by the prisoners when going about the institution so that no prisoner might be recognized by another, and to make it impossible for other inmates to "keep the prisoner in countenance and confirm her in her belief that she is imposed upon there and is not to blame for her trouble." Furthermore, it was to prevent demoralization by association with worse prisoners than herself.

Again, the prisoner had to pay a part of her way. She worked on a contract under the direction of the contractor but on a piece-work basis. For this she was paid a certain sum. With this income she had partly to support herself. She might obtain money from friends. The prison gave her only two rather poor meals a day, three garments, stockings, and wooden shoes. Whatever else she desired she had to buy out of her earnings from the prison canteen. Through a visit every week and letters twice a week the endeavor was made to keep her in contact with her outside friends.

She had to live entirely alone. She had a large, light, airy cell, fairly well furnished, provided with water and electric light.

The results of this system seem to be good, judging by reports of visitors. The women had plenty of work to do, were not repressed except in the denial of social contacts with those inside the prison, and did not suffer from the phantasies and emotional disturbances due to a repressive system of discipline. They were said to work and behave very well, and an English visitor

² Robinson, *Penology in the United States* (Philadelphia, 1921), p. 126

reported that the inmates suffered as little damage from this system as from any system of which she knew.³

In England, in addition to the reformatory for girls under the Borstal system, there is a convict prison for women only at Liverpool and a local prison for women only at Holloway. However, in this convict prison at Liverpool the women are in a block in such proximity to the men's remand block that the language of the men can be distinctly heard and conversation is possible between the two sections. In this institution the women have opportunities of talking with each other during the exercise period. This cannot be described as a women's reformatory in the American sense of the term.⁴

In Germany in 1932 I found that some of the German states had separate institutions for women, but usually the women were in a separate department in an institution for men.

DEVELOPMENT OF WOMEN'S REFORMATORIES

The growth of institutions for women convicts in the United States can be summed up as follows: In 1933 eighteen States and the Federal Government had made provision for the custody and treatment of delinquent women in reformatory institutions.⁵

In addition to these State institutions practically all of the States permit the courts to commit delinquent women to private institutions. In actual practice some of the States contract with other States for the care of women delinquents who are thought to be reformable and still others provide for the reformatory woman in the industrial school for girls, by raising the age limits.⁶ These other measures, however, for the care of delinquent women cannot be called strictly women's reformatories.

The Federal Government until 1927 had no institution for Federal women offenders. In 1924 in response to the urging of a large number of influential women Congress passed the act providing for the Industrial Institution for Women located at Alderson, West Virginia. Previously Federal offenders

³ Gordon, *Penal Discipline* (London and New York, 1922), pp. 210, 211; see also Mossé, *Les Prisons* (Paris, 1926), pp. 101, 102.

⁴ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 347, see also *Report of the Commissioners of Prisons and the Directors of Convict Prisons for the Year 1925-26*, Cmd 2826 (London, 1927), pp. 41, 52, 54.

⁵ Rogers, "A Digest of Laws Establishing Reformatories for Women in the United States," *Journal of Criminal Law and Criminology*, XIII, 385, 386 (November, 1922); MacCormick, "Penal and Reformatory Institutions for Adults," *Social Work Year Book*, 1933, p. 346.

⁶ Rogers, "A Digest of Laws Establishing Reformatories for Women in the United States," *Journal of Criminal Law and Criminology*, XIII, 384 (November, 1922).

had been kept in State prisons, jails, and houses of correction. This new institution based upon studies of the best State reformatories for women, is up to the present time the model institution for the United States.

Characteristics of the Present State Women's Reformatories. There are certain uniformities characterizing the women's reformatories, but there are also many differences. The purpose back of these institutions prevails in all of them. They attempt to take those women who are judged to be reformable and give them opportunities and training to prepare them for normal social relationships.

Some of the institutions are much older than others and therefore they differ in their physical characteristics. The older reformatories were built on the institution plan; those more recently constructed, on the cottage plan.

Furthermore, as time has gone on, there has been a departure from the names by which these institutions were formerly called. Some of them retain the term *prison*; others the name *reformatory*. Still others are called houses of refuge or houses of correction. Recently, however, the tendency has been to call them training schools or industrial institutions for women or farms for women. The endeavor has been to get away from any term which would stigmatize the inmates of the institution.

These institutions are administered differently in various States depending upon the governmental scheme for the control of the State institutions.

In general the age, while not always fixed, is between sixteen and thirty. Some have set a minimum of sixteen or eighteen years without any maximum. The modern tendency has been to remove the maximum age limit and make it possible for women of any age to be received at the institution. Usually the law lays down certain criteria to guide the judge as to who may be sent to these institutions. Sometimes eligibility is limited by the nature of the crime or misdemeanor, sometimes by the length of the sentence provided in the law for a given offense, and sometimes by the nature of the correctional institution to which the repeater had previously been sentenced.

Both determinate and indeterminate sentences are employed in sending women to these correctional institutions. The weight of penological theory is against the determinate sentence for correctional cases, and increasingly the limited indeterminate sentence is being used.

In most of the States having these institutions parole is provided for. Some of them, however, do not provide for parole agents.

The Purpose Back of the Laws. The above outline of the chief features of the women's reformatories gives us only the barest outlines of the picture. However, this review suggests something of the purposes and processes which modern thought on the problem of rehabilitating delinquent

women has worked out on the basis of experience. It tells of the long and steady pressure of opinion throughout almost a century of trial better to adjust our methods to this important purpose. Gradually through that period it has become increasingly clear that the treatment of delinquent women must not be merely punitive but redemptive, so as to return the women to society better able to perform their functions as healthy, useful, and honestly self-supporting members of society. It tells the story of the attempt to take the care and treatment of delinquent women out of the mire of political spoils, to adapt the treatment to their needs as revealed by a careful study of their history and individual characteristics. In the dry bones even of our statutes we may see revealed the purpose of keeping women out of jails and prisons if they give any promise of reformation; substituting treatment for punishment, and of sorting out those who by reason of mental defect or derangement cannot be reformed and placing them in permanent custody for the benefit of themselves and society, so that they may not defeat the reformatory purpose for those who are open to a change of ideals and habits. Within the past century steps have been taken in the treatment of the delinquent woman—medical treatment and the restoration of health, adaptation of treatment on the basis of mental, physical, and social investigation, social treatment in restoration to normal life by training in small groups in family cottages, training in useful pursuits so that the girl may live an honest life after discharge, and training to respond to the best motives operative in free society. Instead of confining these women in cells for punishment, they are given outdoor life that they may know the joy of freedom in restraint to prepare for freedom in society. In short, six of some twenty points which have been emphasized by social workers with such women have been incorporated in the laws of twenty-one States, while a number of the others have been partially met, and many others have been actually carried out by those in charge of the institutions; in some, alas! there is a form of reformation without the substance thereof. As yet in over half of our States there is no evidence that those concerned with the treatment of delinquent women have caught a glimpse of the public obligation toward these women.

Problems of Delinquent Women. Consider the peculiar and difficult problems presented by these women. Many of them are seriously diseased. Most of them have been engaged in unskilled or hazardous occupations. In about half of the reformatories more than half the inmates are offenders against chastity. More than half are recidivists. The sex offenders are young women, the others are older. On the whole the intelligence level is lower than that of women in free society. The level of the sex offender is lower than that of the property offender. The schooling of these women has

been very deficient. Many of them dislike school. On the whole these women come from rather poor homes. In short, in the women's reformatories in the United States the population is much more unselected and heterogeneous than the population in the prisons. These women have been convicted of drunkenness, prostitution, murder, keeping bawdy houses, shoplifting, adultery, drug addiction, and abandoning children. Here are to be found also troublesome girls who have been transferred from girls' reformatories. The inmates are young and old, colored and white, ranging in mental condition from normal to defective and psychopathic.⁷

Consider the difficulties of handling a psychopathic case like the following:

A very handsome young woman eighteen years old at the time of her commitment to the reformatory Unusual physical attractiveness, superior intelligence, but diagnosed as a psychopathic personality manifesting itself in hysterical attacks American-born of a French Canadian father who was a hard drinker, never supported his family, and deserted when his daughter was a young child Mother Irish-born, industrious, respectable, but extremely nervous; died when her daughter was sixteen A younger brother arrested for larceny of money from his employers As a child this young woman led a very irregular life, owing to lack of the father's support. From second to sixth year in an institution, then three years at home with mother, then placed in an institution until aged fourteen, when she was returned to her home because of bad behavior Shortly after sent away again to the House of the Good Shepherd Here so incorrigible that they kept her only one month. Then sent to a rescue home, discharged because of incorrigibility, and at fifteen committed to a reform school Paroled from here to live with an aunt, she soon ran away and worked as an artist's model and in the ballet of a burlesque show Committed with her illegitimate child of four months to the reformatory for women at eighteen on charge of larceny; well-behaved for the first few months of her stay Sent to the institution hospital on account of a salpingitis Screamed hysterically Told that she must continue treatments for gonorrhea, she declared she was not in the same class as these other women who were being treated similarly That afternoon had her first attack of apparent unconsciousness, frothed at the mouth as if having taken poison Stomach was washed out but nothing found Unconsciousness lasted an hour Similar attacks once or twice a day lasting from one-half hour to six hours Cessation of attacks for a few days, then more attacks occurring more frequently and more prolonged Became insolent and refused to eat; threatened suicide. Potassium permanganate found beside her with stains of it on her nightgown and lips Stomach pump, however, revealed nothing. [Continuing the story, Hodder's own words are]

⁷ Lekkerkerker, *Reformatories for Women in the United States* (Groningen, The Hague, Batavia, 1931), Chap VIII, Fernald, Hayes, and Dawley, *A Study of Women Delinquents in New York State* (New York, 1920), Chaps VI-XV.

"Her liberty in the hospital was then taken from her and she was put into a room with another woman to care for her. She then had an attack in which she screamed for an hour and a half, while she was in an apparently semi-conscious state from which all efforts to arouse her failed. She threw herself about with such violence, following this attack, that it took three persons to prevent her from injuring herself. After this she was quiet for one week and admitted that she had had no real intention of taking her life. A month after her admission to the hospital she was discharged to work out of doors, at her own request. The following night she had an attack in her room, being found apparently unconscious on the floor. When she came out of this attack she was very much excited, cursing and abusing the matron whom she found with her. She had finally to be brought back to the hospital where the hysteroid attacks were resumed, this time accompanied with constant screaming. She threatened suicide several times, and once was caught with a cord about her neck, which was removed with difficulty after her face had become cyanosed. She finally became so uncontrollable that she was transferred to the state hospital for the insane. Here she is reported to have continued her screaming, assaulted attendants, smashed and destroyed property, and in her quieter moments teased the insane women about her.

"In about six months she was returned to the reformatory as needing no further treatment at the state hospital. Following this, she gave constant trouble in refusing to obey rules and in inciting others to do the same; she was insolent to the matrons and absolutely refused to do any work which she considered menial. There was, however, no recurrence of the attacks of unconsciousness and screaming, and four months later she was released on parole.

"When only a few weeks on parole she broke it by leaving her place of work, taking with her clothing and money belonging to her employer. Six weeks later she was returned to the reformatory on revocation of parole. Since breaking parole she had been living with a prostitute, finally had attempted suicide on the street, and was taken to a hospital, the officers of which communicated with the reformatory. Two weeks after her return to the reformatory she was transferred to the state infirmary for an operation (salpingectomy). While there she was so unruly and unmanageable that the infirmary officials telephoned the reformatory she must be removed, and she was therefore returned to the institution as soon as it was safe to move her. On her return, she cursed the receiving matron and began at once to be unruly. She was admitted to the hospital department because of her condition. Here she began her old habits of screaming and cursing—would scream for hours at a time, so that it was impossible for the other patients in the hospital to get any rest, the mothers and babies also, whose corridor is above the hospital, had to listen day and night to her screams. When special appeal was made for her to be quiet for the sake of the babies, her answer was 'To hell with the babies.' She refused to take medicine, threw it violently on the floor when it was offered to her. She was placed in a room as far as possible from the hospital and mothers' corridor, still being under hospital care,

but her screams and banging on her door were still easily heard. She broke the chair in her room and with the pieces succeeded in breaking through the grating of her window. She yelled from her window vile language at any man she saw passing on the street; talked to the women through her window in obscene language and incited them to act badly, she took off all her clothing and sat naked in her room; would brace herself against the door so that entiance had to be forced when food was brought to her; assaulted and reviled the officers, or refused to speak to them or the doctor.

"After five weeks of this, she calmed down, but the calm was short-lived, in a short time she was reported as in an excitable state, cursing and ugly. She made another pseudo-attempt at suicide, this time by drinking brass polish; she claimed she had taken a tablespoon full, and then began her screaming again. It took four people to hold her while the stomach tube was passed. Stomach washing showed again she had taken nothing. Following this, there was another period of noise and screaming and escaping from her room. She tore up her blankets and made a rope of them, presumably to strangle herself; placed in the bath, she attempted to go under the water; she had pieces of glass broken from her window and made superficial cuts on her wrists. Finally handcuffs were placed on her (locked in front), and with these on she succeeded in tearing up her skirt, making a string and tying it to the radiator and then about her neck. She broke dishes brought her and refused food, threw food and contents of her toilet bucket on the matrons; spat in the faces of officers and doctors, would watch for opportunity to get past the officer as the door was opened and would run down the corridor and into the rooms, frightening other women—it took several people to get her back into her room and in the process she would scream out the most vile oaths, spitting and biting. Her most pernicious influence was on the other unstable women who would answer her songs and calls. Once she called 'Fire' to create a panic.

"There was next a period of comparative quiet, lasting almost three months, when she again had to be placed in the isolation corridor. She screamed, sang, and banged on the door; she dug through the plaster wall into the next room; broke down the door of this room; ran into the hospital, screaming that she had taken poison, potassium permanganate again, that she had found in the bath room into which she had broken; she fell into a semi-conscious state again and claimed to have great pain. Another washing of the stomach showed, as many times before, that she had swallowed nothing. She was placed in a fresh room in the isolation corridor but continued noisy and profane, broke eight panes of glass, and shouted through the window at passersby that she was being murdered, that officers were sticking nails in her feet and scalding her feet and pulling her hair. She shouted the same accusations at the other inmates whenever she saw them in the yard. At this time she was seen by several visiting psychiatrists, who did not consider her insane. Shortly after their visit, a man from the neighborhood called at the institution to complain that his wife, who was pregnant, was being driven insane by the screams of the patient. He said

the neighbors were gossiping; that many wild stories were being circulated about the patient, but the favorite one was that she was a woman seized by the police during a strike in Rhode Island, and that she 'got going this way during the strike and could not stop.'

"She continued alternately quiet and troublesome for a period of several months, when it was finally decided to try the effect on her of transfer to a house of correction. This was done because she had been wont to say that, if one had to be in jail, the reformatory was the most fashionable place. It is reported that in the house of correction she began her screaming and smashing, whereupon the master promised her, if she stopped, he would see that she was paroled, and in this way parole was voted three weeks later.

"This résumé of her reactions at the reformatory simply describes her noisy periods; her periods of quiet, however, were only relatively so—there was never any time when she was not troublesome. Special kinds of work had to be devised for her; she demanded rubber gloves when she was asked to do any work that necessitated putting her hands in water; special privileges had to be given that could not possibly be given the women as a group; the matron under whom she worked at such times was under constant tension. She was intelligent and attractive, and a leader of those about her, although she was on the whole brutal in her comments on the physical and mental defects of those less generously endowed than herself. Her tendency as a leader caused much more trouble than her noisy outbreaks, as it spread her methods among her unstable followers. She attempted, and succeeded in a measure, to start small riots, herself keeping in the background."⁸

It is quite clear that in such cases hope of reformation is rather remote. The State should really provide for her care in a special institution, since the psychiatrists will usually not accept such patients on a transfer to their institutions.⁹

Even when the inmate is not psychopathic, incarceration in an institution may develop a state of mind which makes discipline difficult and reformation rather hopeless.

Discipline. In the women's reformatories much the same methods of discipline originally were used as in the men's. The marking system was employed for the purpose of stimulating good conduct because upon that system rested the possibility of early discharge on parole.

More recently, however, since the relation of mental conditions to delinquency has been made clear, the tendency has grown to apply disciplinary treatment to the unruly in accordance with the findings in the case. The disciplinary cases are often girls who are subject to emotional disturbances.

⁸ Hodder, "Disciplinary Measures in the Management of the Psychopathic Delinquent Women," *Proceedings, National Conference of Social Work*, 1920, p. 391.

⁹ Hodder, *ibid.*, p. 395.

The problem of the reformatory would be very much simplified were these cases removed. It has been pointed out that "a frightened public, pleading for protection, and a judiciary untrained in psychiatry, commit these people to the strongest, ugliest, most unsympathetic building they can construct and call them criminals. To this the psychopathic personality rebels like a small boy sitting on a pin. Her conduct says what her tongue has not yet learned to say: People need treatment on the basis of personality defect, not on the conduct of manifestations of these defects."

Classification. The establishment of the reformatory was an attempt to classify women delinquents on the basis of age. However, the experience of administrators in women's reformatories, together with the growth of psychiatry and the understanding of personality, has made it imperative that classification should be established on a different basis. For example, Dr. Mabel Fernald found the following percentages mentally defective in the three New York institutions for delinquent women:

Auburn	23.3
Albion	25.2
Bedford	33.5

Said Dr. Fernald, "This is offered as our estimate of the population in need of permanent supervision, if not of indefinite custodial care."¹⁰ The Bedford Reformatory attempted some such classification by means of the system of cottages. However, such classification was quite inadequate.

New York State after numerous experiments has a threefold institutional classification of adult women delinquents. The Women's Prison, which for a long time was located at Auburn in connection with the State prison, has been moved to the grounds occupied by the Bedford Reformatory for Women, but in a series of buildings separate from those of the Reformatory, buildings constructed by the Rockefeller Foundation as a laboratory of social hygiene. In 1923 the State purchased this property and used it for a short time as a special institution for psychopathic reformatory inmates. This experiment did not work out very well, and now these buildings with others added to provide a complete unit have become a women's prison. While the occupants are kept entirely separate from those of the Reformatory, for economy both institutions are under one superintendent and certain activities like industries and recreation are under personnel common to both institutions.

The old institution at Albion known as the House of Refuge was designated by the legislature in 1931 as the "institution for defective delinquent

¹⁰ *Prison Survey Committee Report, State of New York* (Albany, N. Y., 1920), p. 379.

women." Its official title is the Albion Training School. Heretofore these defective delinquents had been segregated in a special division at the Bedford Reformatory, but this experiment was not a success. This classification of mentally defective delinquents in a separate institution marks a distinct advance in the treatment of delinquent women and is to be found in only two other States, Massachusetts and Pennsylvania.

The third institution is the Bedford Reformatory for Women at Bedford Hills, New York, opened in 1892 as the State Reformatory for Women of the eastern section of the State. It has now become the reformatory for women for the whole of New York State except mentally defective women and those sentenced to prison. Thus New York has a classification by institutions as well as a classification of the reformatory inmates at Bedford by a system of cottages.

At the new Federal Industrial Institution for Women opened in 1927 the two groups of cottages provide for the classification of women in that institution and for an extension of the individual treatment of each inmate.

These experiments are an indication that the careful students of the problem of the delinquent woman have at last become conscious that all kinds of delinquent women must be handled in such a way as to do the most possible to restore the inmate to a normal life, and to keep in custody those who cannot safely be returned to society. To do this, colonies for the different types should be established so that as far as possible the individual and community treatment would be suited to the needs of each individual.¹¹

Officers. Where partisan politics has not laid its blighting hand upon them, women of extraordinary capacity have been placed in charge of these institutions. Such women as Dr. Davis, Mrs. Hodder, and others of their sort have made the women's reformatories of the United States known throughout the world. In England the practice has been established of using only professional women as officers.¹²

WHAT SOME OF THE BEST REFORMATORIES ARE DOING

A brief description of two institutions for women will perhaps provide a concrete picture of their activities. Let us take a small institution in Vermont, a very thinly populated rural State, and then take the new Federal institution for women at Alderson, West Virginia. The institution in Vermont has only a small number of women, perhaps seventy-five. The institution at

¹¹ Hodder, "Indenture of Prisoners. An Experiment," *Journal of Criminal Law and Criminology*, May, 1920, pp. 29-32.

¹² Mrs. Hodder, in *Public Document No. 115, Commonwealth of Massachusetts, Annual Report of the Commissioner of Correction, 1921*, p. 88.

Alderson, West Virginia, is a large institution built for about 500. Did space permit, a better picture of the woman's reformatories would be provided if we could describe some of the state institutions medium in size, such as that in Connecticut, or the one in New Jersey.

The Vermont State Prison and House of Correction for Women. This institution is an old one, originally built on the institutional plan, and with a wall. Under the leadership of Miss Lena Ross, its superintendent, it has been transformed from one of the old, forbidding institutions of the country into one of the most constructive among the women's reformatories. The old cell blocks were torn out and the cell houses transformed into home-like rooms. The doors are not locked in the daytime, and yet in 1931 only three had ever escaped. They had only one industry in the institution, a laundry, which not only does the work for the institution, but "takes in washings" from the people of the town. The following quotations from an article by Sarah Cleghorn will give an intimate look-in on the workings of the institution:

"Come in and look at the kitchen. Do you see that one of its three outside doors opens to the afternoon sun, on a court with a lattice fence? There used to be a solid brick wall eighteen feet high closing in that court. Two or three of Miss Ross' girls are resting out there, sitting on a bench on the bright grass. Inside too the sun shines and the breeze blows. 'This sunny, open, homelike place,' says Miss Ross, with a trueborn Vermonter's many-meaning'd smile, 'costs much less than bolts, bars, heavy furniture and the many, many guards used elsewhere, as expensive as they are deadening to the soul.'

"In that kitchen, when a Riverside girl has a birthday, her friends make her a birthday cake. In that dining-room, for birthdays and holidays they decorate the tables and make a festival supper. Did you ever hear of prisoners having parties? Riverside has had a wedding breakfast. For health, human beings must have light and air—inexpensive commodities usually expensively shut away from prisoners. But they need work too, just as bitterly. 'I wanted to give them some real womanized work which could be competently handled,' said Miss Ross, 'without expensive equipment and supervision. I thought,' said she, 'of laundry work. No, I didn't advertise or anything. I just told some of my friends if they'd send us their laundry we'd do it. Some people I realized might be afraid to send their belongings here. They might be afraid something might be stolen. But Rutland people didn't seem to be afraid.' (You see, they had known Lena Ross for some fifty years.)

"This, by the way, is one of Miss Ross's great qualities. It never seems to cross her mind that she will need to do anything alone. She counts on her friends and they respond accordingly; so that whatever she tries to do she has troops of helpers.

"Well, our first month's *gross* receipts,' said she, still giving the history of Riverside's flourishing laundry, 'were twenty-five dollars. What do you think Judge Weeks said? Splendid!'" Miss Ross laughed 'In the beginning, you know, there were only four set tubs and flatirons heated on the kitchen stove. Now don't you want to come and see the laundry? . . Here you see we have three washing machines, family size, fourteen self-standing ironing boards, each with its electric iron, of course, and two mangles, broad and narrow'

"The washroom and the ironing room, one above the other, were airy, light and cool. (It was an August day) Their generous windows, as in the other rooms, run all along the side

"Yes, twenty-five dollars was our first gross receipts. And now that we've been doing laundry work for seven years we almost pay the whole living expenses of Riverside.'

"What! you mean the cost of food and shelter? . . and that's sufficiently wonderful. You wouldn't mean to include staff salaries, doctor's bills, anything like that?"

"Oh yes I do! Including salaries, doctor's bills and so forth, our laundry *almost* supports us. In 1929, we were only \$1063 short of covering our total living expenses. And out of that, we paid bonuses to the girls. They get three to six dollars a month themselves, and we lay aside a dollar a month for each one for their 'discharge money' But that's the least of what the laundry does. It builds up healthy pride, and workmanlike responsibility and social solidarity. It's a common thing for one of the girls to suggest some way of saving money or increasing the income One woman, when we were having so much trouble to find a man who'd keep the furnaces going properly, said, "Why not let me take care of those furnaces? I could do it perfectly well, and we'd save money to buy something we need",'

"How many workers are there running this laundry?"

"Well, we average a total population of seventy; and it takes almost half of them to run the institution The rest work in the laundry; thirty-five to forty'

"In another room, the work-room, we asked idly, looking at an ordinary door, 'Where does that lead to?'

"To the street,' said Miss Ross, 'and it's not locked'

"We looked around. A group of women actively came and went at their work but with no signs of a guard anywhere in sight. 'Whom do you have with this group of pris—your girls?' we asked

"A matron'

"But where is she?"

"Miss Ross looked and said carelessly, 'She might just have stepped out somewhere for a few minutes'

"This was too much We drew her back into a corner and said sternly, 'Now come, no nonsense, you *must* have runaways! How many have you had in the nine years you've been here?'

"'Three Federals,' she replied, 'and they were still in a drug-crazed condition before they got their health and spirits back. They weren't hard to find either. It never has cost the State of Vermont one penny to recover runaways. They were brought back by the federal government.'

"'Not another one?' we urged

"'Well, yes, one Vermont girl ran away after she'd been here a short time, but before I got around to starting out to look for her a man who keeps a little general store back in the mountains called us up on the telephone: "Say, Miss Ross," he said, "one of your girls has just come in and wants us to telephone you to come and get her."

"'But what *do* you do to make them act so?' we asked baffled

"'On her Jane-Addams-like face, usually set in a reticent Vermont expression of practical matter-of-fact common sense, came a look that was half exaltation, half indignation. She flashed out briefly, passionately, 'I treat them the way I'd like to be treated myself if I had to come to a place like this'

"'So simple as that, O Galilean wanderer, who told us this recipe so many centuries ago. We were a little abashed, as all moderns are by a glimpse, even a passing one, of a Christian soul. But we persisted in our cross-questioning, groping for some machinery to report to a world that puts its faith in machinery and organization.

"'Well now, come right down to concrete details. Suppose now that you get in a woman prisoner, rotten with venereal disease, as many of them might be on arriving, without an ideal in her head, healthless, vicious, violent, unclean. What is the first thing you do for her—and the next and the next? You don't put her right away in a room with an unlocked door opening on the street?'

"'I'm not a born idiot,' Miss Ross answered us, unnecessarily. 'Of course I don't. First of all we look after her physically. She goes into our hospital for a fortnight, and the hospital door's locked. But we all, matrons and girls, run in and out of the light, airy room, more or less during that period and get acquainted with her. The girls who have been there some time are splendid about that. They help get the new ones settled much better than we do. They know what to say to them. And the new ones believe what the girls say about Riverside when they wouldn't believe us.'

"'The newcomers rest, in bed if they're pretty sick, as many of them are on coming, have a thorough medical examination, just what anyone ought to have once in so often, and they are treated for whatever's the matter. For instance, a repeated offender, a very hard case, a woman nobody had ever been able to "make any impression upon," was sent in a few years ago from the north of the state. When she came in, we noticed that she held her head over to one side. She kept continually wagging her head. We asked her if she were in pain, and she said drearily, "Oh yes—it hurts all the time." She had double mastoid! We sent for the best specialist we could get. You know that's one great thing about the State of Vermont. It isn't a rich state, but it never sets a limit on the amount to be spent for its sick prisoners and other dependents. We sent that woman

to the Rutland hospital (for we never have serious operations done here) and we pulled her back to health.

"It seemed to make a great impression on her. From that time she changed, completely changed. She's never been in a court-room since but once; and then it was to testify as a witness in another case. But when she finished her testimony she asked for a minute longer. She told the judge she wanted to thank him for sending her to Riverside for that was the first place where she was ever treated as if her health and happiness were of any importance. "Why, Judge," she said, "they called in the best specialist in Rutland!"

"Out of twenty-five women who entered, syphilitic, twenty-one showed before they left, completely negative tests. We try to take the tests three times at least to be sure. Two weeks of quiet, cleanliness, rest and security—they can read or sew or knit or write letters or sing, or anything they like—in the hospital with some friendly talks every day, usually get them far enough along the good road so that they enter into our community life when they come out. I tell them myself something like this. "see here, it's hard on you to be shut up here, and I wouldn't like it a bit if I were you. But there's no getting around it, it's got to be lived through. Now we, here, think it's much better to try to get through it as comfortably as we can instead of as uncomfortably. We haven't a thing to do with you being sent here, so it's really not fair to try to take it out on us.

""We try our best to make these years of your life a time when you'll get your health back, learn things that you never had a chance to before, and go out with a better chance of amounting to something. Most of our girls do, after they leave here. We've had about 370 go through Riverside in the ten years since I've been here, and only four Vermont girls and two Federals ever came back to us on a second court charge. You just think it over. Talk with some of the girls who've been here awhile. They really know about it, from the inside, of course." As she thus gave us some idea of how she presented her ideas to the helpless creatures who came under her care, her face shone with sisterly reasonableness."¹³

The other institution, the Federal Industrial Institution for Women at Alderson, West Virginia, represents an entirely different type of reformatory for women. It is the newest institution in the United States, having been opened in 1927. It is the only institution built and conducted by the United States Government for Federal women offenders. It is intended, according to the Act of Congress establishing it, for "female persons above the age of 18 years, convicted of an offense against the United States, including women convicted by consular courts sentenced to imprisonment for more than one year."¹⁴ It is built on 517 acres of land. It is constructed to care for 500 inmates besides the staff, on the cottage plan with two groups of buildings,

¹³ Cleghorn and Canfield, "Miss Ross' Girls," *The Survey*, Aug. 1, 1931, p. 430 ff.

¹⁴ Public No 209, S 790, 68th Congress.

one on the upper campus and one on the lower. It was planned after a careful study of the best State reformatories for women to be found in the country. The features to be found in the institution are those which experience has approved in similar State institutions. It cost something less than two and one half million dollars. All the buildings are fire-proof. Provision is made for every feature found necessary for the proper handling of the inmates. It has, in addition to the service buildings, such as water supply, ventilation plant, sewage disposal plant, power house, laundry, store-houses, etc., an administration building with living quarters for the members of the staff, a dining room, superintendent's residence, a receiving building, an industrial building, fifteen cottages for thirty inmates each, a staff house, a school and assembly building, and a hospital with thirty-two beds, besides garages, grain houses, root cellars, incinerators, barns, dairy house, poultry house, piggery—in short, all the necessary buildings to carry on the life for nearly 600 people.

The institution stands on a hillside in the midst of a natural grove with the two campuses at right angles to each other, but on different levels. Each of these campuses has buildings on three sides. Each of the buildings is separate from the other, which prevents that feeling of pressure and tension often resulting when the buildings of an institution are crowded together.

The cottages are planned so that each has its own dining room and general living room, with the living rooms for the inmates in between. These rooms are furnished simply but attractively. Each girl takes care of her own room and is permitted to fix up the room according to her own individual taste. Each of these cottages has sleeping porches in addition to the bedrooms.

At one end of the upper campus is the receiving and classification building. In this are the quarantine rooms where the girl stays for two weeks after her admission. This building can care for fifteen women. The clinic is also located in this building. Besides the classification building there are quarantine cottages housing twenty-four girls each, the only cottages in the institution having barred windows. The hospital is located next to these cottages, while the school building, comprising the auditorium, the library, the classrooms, and the gymnasium, is located at the top of the steps leading to the lower campus. Five typical cottages complete the scheme of buildings on the upper campus.

On the lower campus are the administration building, the staff building, the household science building, and seven cottages. Here also are located, at some small distance away, the storehouse, the steam laundry, the cannery,

the garage, the shops, and the power house. The women work only in the laundry and the cannery.

Consider the following description of the methods employed in this institution, written by Dr. Harris, the superintendent:

"In correctional institutions, this mass-handling almost of necessity tends to favoritism, and is the fundamental cause of many of the abuses which flourish in the abnormal atmosphere of custodial institutions, often without the knowledge of those in authority. To prevent this favoritism and corruption, and to give every inmate committed to these correctional and penal institutions an even chance to develop as far as her endowment permits and become a law-abiding and self-supporting member of her group, should be the objective of these institutions. Toward accomplishing this result, much has been learned from the large, over-crowded state hospitals for the insane, where many of the same problems are met in a scientific manner, in spite of the large number of cases handled. By staff meetings, at which each case on admission is presented by one of the staff and brought to the attention of the Superintendent and entire staff for diagnosis, treatment, and follow-up care, every patient, however poor or helpless, receives the advantage of the best advice the hospital affords

"The same plan has been in operation in this Institution almost from the start. A classification committee, consisting of the Superintendent, the director of classification, the psychologist, resident physician, record clerk, parole officer, and warders of the cottages, meets twice a week or oftener to consider the cases before it. To this committee are presented all incoming cases for diagnosis and assignment. At the end of every three months, the same cases appear again for detailed consideration and reassignment is made if deemed advisable. Disciplinary cases of a serious nature, involving loss of 'time,' are brought before the committee. Cases that show personality difficulties are frequently stabilized by bringing them before the committee every week for an indefinite period.

"At all these meetings, the inmate herself appears, her program is explained to her, she is given an opportunity to share in the plans for her future, and told where she is succeeding or failing. At these meetings, a report is presented in writing from everyone who has official relations with the case, either in industrial department or cottage or school. The physician presents a new medical report every three months, often permitting change of assignment. Nothing is left to chance, or a haphazard guess, or to individual memory, too often based on the last contact, whether pleasant or unfavorable. Daily conduct reports come in from cottages and departments, and are checked by the record clerk. If the same individual has poor reports for several days, the case is investigated, and if not adjusted in the cottage, is brought before the committee.

"The work of the classification committee is the heart of the morale of the Institution. It brings together at regular intervals an impartial group who plan and formulate without prejudice or rancor. It permits no inmate to be neglected or overlooked. In short, like the staff meetings of a hospital, it functions toward

the individualization of treatment that is the basis of the rehabilitation for which the Institution was created. It takes time and work to prepare the records and hold the meetings. But it saves time in that everyone working with the individual understands the problem and knows the program. Time is saved in that all work toward the same end, and a minimum of effort is wasted in undoing the mistakes caused by lack of co-ordination and understanding."¹⁵

The whole physical plant is intended to carry out a classification as minute as possible and yet retain the wholesome influences of group life. Each of the cottages has its own living room, dining room, and kitchen, thus providing for the teaching of all phases of home-making as well as for classification.

Ample provision is made for medical and surgical care in the hospital of the institution. Special attention is given to venereal disease and drug addiction. The experience in this institution is that after three months' time as a rule the drug cases present no variation from the rest of the population. This is due to good medical care, good food, regular habits, outdoor occupation, and a program intended to build up new interests and habits of thought after the physical craving has ceased.

The problem of education in this institution is difficult because of the different potentialities of the students. They vary from college graduates to illiterate Americans and foreigners. They range in age from eighteen upwards. Some are sick, some well, some willing, others unwilling. They enter the institution any day of the year. The problem is to organize an educational program suited to the needs of the individual pupil and yet fitting into the necessary maintenance work of the institution. The law requires elementary English and Americanization classes for the illiterates. Reading is provided in subjects connected with their future occupations. Inmates of superior education are used as teachers under the direction of a civilian teacher. Assignment to both school and work is made only on the recommendation of the classification committee. If illiteracy or shortness of sentence prevents a woman from benefiting from a complete course, a modified course is planned suited to her situation. The attempt is made on the basis of the study of the individual to provide a training fitting that individual for a useful place in society. In all this work of the classification committee, the psychologists' and psychiatrists' findings and the social history are basic.

Practically all the maintenance activities of the institution are used as methods of training these women for a vocation. Mrs. Harris believes

¹⁵ *Annual Report, Federal Penal and Correctional Institutions, Fiscal Year Ending June 30, 1930* (United States Penitentiary Annex Press, Fort Leavenworth, Kan., 1930), pp. 44-54.

that the most important activity from the standpoint of both health and output is farming. All except the heaviest work on the farm is done by the women.

Within the institution itself a program of social activities is carried out by groups organized among the inmates in order to satisfy the natural social yearnings of these girls. The organized groups coöperate with the institution management to promote the highest development of which each individual is capable. These groups share in the government within the institution and take the responsibility for individual conduct in order to train for citizenship in the free world. In each cottage is a cooperative club with membership open to all but graded into probation group, electorate, and executive committee. These clubs provide an incentive to rational conduct and have proved to be a stabilizing factor in the development of morale. Other inmate organizations are encouraged such as the annual "County Fair," the Wednesday evening "Current Events" programs, community singing, choral work, minstrels, and plays by the different cottage groups. Athletics and competitive games are fostered during the summer months. Cottage baseball teams enrol as many as 200 of the inmates at one time. Religious activities are organized and carried on. In addition to grace at meals and evening prayer in all cottages, on Thursday evenings formal instruction is given by visiting clergymen of the Protestant and Catholic faiths. Sunday afternoon a vesper service is held for the whole institution. On Sunday evening each cottage has its own service planned and conducted by members of the cottage in turn. Every Christmas a pageant of the Nativity is presented by the choirs. Holy Week is observed daily by chapel exercises, and Easter is ushered in by an outdoor sunrise prayer-meeting.

These various occupations and interests tend to provide sublimations of the fundamental impulses and stabilize a great majority of the inmates. The cottage groups themselves handle the minor infractions of rules. Serious cases are brought before the classification committee. The only punishments used are loss of privileges, seclusion, and loss of "good time."

In spite of the fact that this institution receives women who are usually found not only in reformatories for women but also in women's prisons, that practically half of the inmates are drug addicts, and that many of them are seriously disturbed mental cases, none have had to be sent to institutions for the mentally disturbed, and the stabilization effected in all these cases has been quite satisfactory. Mrs Harris gives great credit to these coöperating clubs and the other group activities of the inmates themselves.

Contrast that picture with the following description of the situation in the old type of institution for women.

"Let us go with the girl to her detention and see its effect upon her. She has just waited in prison for her trial, has been sentenced, and is brought to Aylesbury. She arrives suffering from some degree of shock, and is usually fairly subdued.

"She goes for at least three months into the 'punitive' ordinary grade. She does not come as to a school, where she is going to learn about life and conduct, but as an ordinary prisoner . . . For these three months obedience is almost the highest virtue that her prison life allows her to show . . . But nothing can make the prospect of two or three years' imprisonment anything but a shock, and a severe trial to an adolescent girl (or boy) . . .

"Sometimes her sentence has separated her from a lover or *fiancé* or she is in dread that she will be deserted, and in grief because she will not be able to write or receive enough letters to keep really in touch with those she loves. Sometimes she has the reproach of having wounded and disgraced her family. With all her feelings on edge, with the conflicting emotions of shame and self-justification, depression and bravado, inferiority and defiance at war within her, in amazement at finding herself thus torn up by all her young roots, she is in a sorry plight, and is a subject for delicate and skilled approach by those who would know her attitude towards them, and show her theirs towards her . . .

"Certainly it may be necessary that the wilful and uncontrolled should be brought under control, and should suffer some degree of loss of liberty for their own, and their neighbours' sakes. But are our ideas so poverty-stricken that we can take no other way with this girl than to deprive her of all her personal liberty, to create for her more offenses than she could commit in an ordinary school, to subject her to continual reports and punishments, and to penal discipline, with the degrading feature of the penal class—to make of her a chattel, not even self-supporting, and to place her under a set of more or less trivial regulations which force her into an institution mould? Can character, personality, or even a disposition to refrain from crime, develop in any such soil? Let us see its effect upon her, and how her attitude is affected by the system.

"Modern psychology, in its practical aspect, has little to say about brains and intelligence—it is based on a study of the primitive instincts and emotions. A prison, on the other hand, has no use for the emotions, expressions of feeling are as much out of place as pistols would be the prisoner's part is to do as she is told, and consume her own smoke. In practical psychology the adjustment of the individual to life depends upon mental and emotional balance. If a person is 'wrong-headed' his cure is as often as not *via* his heart, or vice versa. . . .

"One of the most common states of mental debility or illness, which is always associated with emotional stress, is hysteria . . . There is plenty of it in all societies, and as it is highly dangerous, if untreated, to the integrity of the personality, and apt to supervene in people of great value to the community, it should never be lightly regarded.

"It is produced by predisposition, and can occur in attacks under the stress of mental conflicts, of which the patient is unaware. The condition may affect

the whole state of the patient, and may sometimes leave considerable mental injuries in its train. It is made worse by occasions of emotion, solitude, repression, lack of interest, fatigue, stress, shock and punishment . . . Whatever the factors which they as individuals bring to the production of this pathological state, the prison, by shutting down the instinctive life, and setting the heavy weight of penal discipline on the safety valve, unquestionably plays the larger part. The prison holds the prisoner in a state of emotional stress and mental conflict. As has been pointed out by other writers, it is not the imprisonment itself, but the psychic result of the imprisonment that does the mischief . . . She, who has perhaps, never in all her life slept in a room alone, is locked up every night for nine or ten hours. In her cell or 'room' she may rage, or cry, or suffer her personal pains dumbly. She quickly settles down among her fellows, and her first reactions are seen in her movements and attitudes, and in a defiant flouncing walk, and manner of obeying orders. In the period when she is better having as little of her own society in her cell as possible, she has the most of it, and eats alone, and may not talk. If she does not get peacefully through her first three months of this discipline, she will have more of it. She soon, unconsciously to herself, represses what is painful to her. She does not occupy herself with the dreary affairs of the Institution, or her mind with the easy work that is spread over a long day. She broods and fancies, or (as science spells it) fantasies her world, not as it is, but as she would like it to be . . . In a few weeks her cell becomes the place where she can indulge her dreams, and where she wishes that the wishes [sic] that she cannot realize in real life, come true. Her inner world becomes more real and vivid to her. Her face begins to 'set'; she no longer flounces when she walks. The stage is already revolving without her. She is going away. Supposing that this is all that happens to her. Is one, or two, or three years of this going to make her abstain from crime?

"But this is frequently not all that happens. Presently you may see the 'effect of discipline' on her. She begins to get mechanical over her work, although she may go briskly about it, and may settle down to the remorseless time-table. When the Inspector asks about her conduct the reply is that she is not very bright, but 'keeps on,' or 'plods.' This is the good prisoner. She is tractable, she gets no reports . . .

"You may see her on Sunday sitting in chapel in her pretty frock, apparently listening with a serious face, or singing earnestly. Is she there at all? No. She is eating chocolates in a music-hall, with Alf, or is under a bush in Richmond Park with Bert, or is having the Sunday dinner of steak and onions at home, or is buying a new hat trimmed with pink, or is wondering who Bill is going to take out instead of herself on Bank Holiday, and what she will say when he tells lies about it, and she finds him out—in two years' time. You have her here and are drilling her, but she is not even listening to you. She is living her aching longings in phantasy. If they are no worse than the above you have something at least to be thankful for. She may go through her whole term of imprisonment like this. The Inspector hears that she is inattentive, and takes no interest in

anything. No one can imagine what work will suit her when she leaves, on her discharge. She seems to have no likes or dislikes.”¹⁶

Results. What have the reformatories to show in the way of results? We have two somewhat different conclusions on the matter. There are those who, after the great progress made in the institution at Bedford and similar ones had begun to show results, and comparing those results with the products of previous methods, were enthusiastic. Said Mrs. Barrows: “The statistics of those placed on parole who have never been re-arrested, and the number holding their word by reporting regularly, are, however, ample encouragement for those who have had the care of these women”

Ida M. Tarbell, ten years after the establishment of Bedford, wrote as follows:

“But how well will they do? The statistics of the first one thousand girls in the institution show about what can be expected Six hundred and sixty-eight of this one thousand were paroled after an average stay of two years Out of this number one hundred and fifty-four broke parole, and a third of their number, fifty-two, were never found. What was the cause of these failures? In thirty cases it was drink Rarely are the habitual drunkards reformed Drink for one-fifth, and for the other four-fifths immorality Sometimes it is an old love, sometimes a former girl friend, sometimes the call of the street, which is back of the relapse .

“One hundred and fifty-four then of the six hundred and sixty-eight girls broke parole, but in hopeful contrast is the fact that three hundred and ninety-three paroled girls were discharged after having ‘done well’ Scores of these are happily married, or are earning sufficient incomes To many of these Bedford is ‘home.’ They come back for vacation, for Christmas, for the Fourth of July. At one of the big lawn-parties which the institution occasionally gives in honor of its neighbors, a guest of wealth and social position said to a fine-looking woman in the company ‘What a wonderful place this is? Were you ever here before?’ ‘I was once a girl here,’ she said quietly. That woman was transformed from an irresponsible and ignorant street waif to what she now is, an intelligent and happy head of a home It is a point of honor with her to own her debt.”¹⁷

On the other hand, a sense of comparative failure is voiced lately by some of those who have been most intimately acquainted with the reformatories for women in both America and England. Says Mrs. Hodder, of the Massachusetts Reformatory:

¹⁶ Gordon, *Penal Discipline* (London and New York, 1922), pp 172-180

¹⁷ Tarbell, “Good Will to Woman,” *The American Magazine*, December, 1912, pp

"Reformatories for women are not now meeting the needs of the women sentenced to them by the courts. We reach this conclusion from a conviction that with so poor a tool no worth-while result can be achieved.

"A reformatory which receives women from all the courts of a given state has within its walls a group of people whose only common denominator is crime, not similarity of nature. In that year (1915), while 36.4% had no nervous defects, 26.2% were neuropaths, 12.4% psychopaths, 16.2% were epileptics, and 8.8% were hysterical. To try to handle all these various types by the old methods of the reformatory is sure to be unsuccessful. What is needed is that these women be classified, not according to age or crime, but according to type of make-up. Then care for them, either on probation (for the normal) or in colonies where each one will be treated according to the nature of her disability. The next step, then, in the correctional treatment of girl and women offenders is a new kind of reformatory—a reformatory which shall be organized and administered on the principle that persons committed to it must be classified into distinctly separated groups, who shall be given the special care and treatment that these groups require, care and treatment which shall focus itself not only upon the physical problems involved, but especially upon the psychiatric problems which are the predominating factors in their delinquent careers."¹⁸

The picture previously given of the institutions in England by one who for seventeen years was an inspector of the institutions in which women delinquents were kept is one of even greater failure.¹⁹

In partial explanation of the girls' behavior she adds:

"Naturally all prisoners do not react to repression in the same way or degree, and the picture I have drawn includes a number of stages which may represent the condition of a number of girls. But I believe that the 111 cases of violence of which 33 ended by restraint of the girl by handcuffs last year, were not due to any other cause than a pathological state induced by the character of the disciplinary conditions which we impose in our prisons, and under which it is hopeless to engender the attitude which will lead to what has hopefully been designated as the 'arrest of the criminal habit'."²⁰

The results of the newer experiments are not yet available.

RECENT TENDENCIES

As a result of the frank facing of the shortcomings of these institutions a number of tendencies which are not yet fulfilled in most places are to be seen.

¹⁸ Hodder, "The Next Step in the Correctional Treatment of Girl and Women Offenders," *Proceedings, National Conference of Social Work*, 1918, pp. 117-121.

¹⁹ Gordon, *Penal Discipline* (London and New York, 1922), Chap. 10.

²⁰ *Ibid.*, p. 187.

1. An earnest attempt is being made in the most forward-looking States to classify the different types of individuals in order to individualize the punishment more definitely.

Mrs. Hodder, before her death, attempted to make the Massachusetts Reformatory contribute to the individual treatment of the inmates. Dr. Van Waters, Mrs. Hodder's successor, recently has taken even further advanced steps so to organize her institution that the individual inmate may be treated according to her needs and will be so organized in her social relations within the institution that she becomes adapted to free life. The measures taken in New York State look in the same direction. In a number of other States those in charge of the institutions for women are trying new experiments to prepare these women for free life.²¹

2. There is a tendency to get these women out of doors, outside of walls, and even out of workrooms and institutions as much as possible. The best institutions are working the inmates out on the land of the reformatory. This plan serves not only the purpose of classification, but of outdoor work with its healthful and quieting influences upon the women. Kansas has torn her women's department away from the State Prison at Lansing and has placed it on an industrial farm where the women do all the work and raise most of the supplies which they need in the institution.²²

3. In the treatment of delinquent women it has been clearly seen that medical attention is of the first importance. Large numbers of these women come into the institution badly diseased. Their social rehabilitation must begin with the physical. Consequently, in our best institutions the women are given as good medical and surgical treatment as can be found in any hospital.

4. Research has been forced upon the institutions by the necessity of basing treatment upon known facts about the women. Massachusetts has had a research department since 1911. During its first ten years it studied 1,748 individual histories. These studies were used in the weekly clinics and formed the basis of the treatment of the women as well as the foundation for decision as to whether women should be recommended to the Board of Parole.²³ Careful study given to each individual case, such as is found in the new Federal institution for women delinquents and a few of the State

²¹ Van Waters, "Where Girls Go Right," *The Survey*, May 27, 1922, pp. 361-376. See also Lekkerkerker, *Reformatories for Women in the United States* (Groningen, The Hague, Batavia, 1931), Chaps XIV-XXVI.

²² "A Woman's Industrial Farm Which Replaces a Prison," *The Literary Digest*, September 25, 1920, pp. 77-80.

²³ *Annual Report of the Commissioner of Correction*, Public Document No 115, Commonwealth of Massachusetts, 1921, p. 84.

institutions, with careful records of the findings and frequent staff conferences in which each case is discussed, provides the basis for that individual treatment which is so often discussed but about which so little has been done.

5. While psychiatry has brought to the attention of workers with delinquent girls and women the importance of considering the emotional life of the inmates, little attention has been paid to this matter by most of the women's reformatories.²⁴ On the other hand, a number of the leaders in the work of women's reformatories have a high appreciation of the importance of mental hygiene and the part played in mental health by emotional adjustment. Dr. Lekkerkerker after a study of the women's reformatories in the United States and a discussion of the failure of merely repressive measures for those actions on the part of inmates who are suffering from the suppression of their ordinary ways of emotional outlet, discusses some of the factors which have been found very valuable in the emotional adjustment of the women in these institutions. She says:

"The active community life, the home-like atmosphere of the cottage, the possibility for the women to decorate their own rooms with plants, pictures and other personal possessions, giving them at least a semblance of home, all these are factors of great interest in making the situation more satisfying from the emotional point of view. Equally important is a full and varied program of activities sufficiently adaptable to individual needs to arouse and hold the interest of all the women. Outdoor life and work and active sports offer outlets for the physical energies of the inmates and prevent much unwholesome day-dreaming and other undesirable practices. Music, folk-dancing and other forms of expressive and emotionally colored recreation are felt to be indispensable aids; an excellent outlet is particularly the theatrical performances in which the women can express their dramatic tendencies. The injection in the program of some adventurous and exciting elements every now and then, such as excursions in the woods for picking berries or the construction of some unusual work, is also very valuable in warding off pent-up emotions. Good books and moving pictures, too, may be a great help in that they satisfy the cravings for romance and thrill. The animals on the farm and domestic pets form to some women a source of much emotional gratification, and the babies, too, are often unconscious assets in the emotional adjustment of individual inmates of which some institutions make a tactful use. The mail and visiting privileges also mean a great deal to the inmates as we shall point out elsewhere. Taking part in altruistic community activities and undertakings, such as Red Cross work, sometimes is a great aid in sublimation."

Moral and religious instruction, unless so organized as to give an outlet to fundamental human emotions, is looked upon by the inmates as only a

²⁴ Lekkerkerker, *op. cit.*, pp. 394-395

part of the repressive régime. Properly organized it may become a satisfactory outlet for the emotional needs of these somewhat disorganized women. Furthermore, some of the more far-sighted leaders are experimenting in allowing closer association between the inmates and the officers in order to provide another outlet for fundamental emotional needs not to be found even in close association with other inmates

Measures are also being introduced to provide organized activities which will satisfy other emotional needs and thus provide something of a real orientation to the actual conditions of free life.

6. Increasing emphasis by all reformatory experts is placed upon prevention. They have a firm conviction that society can prevent the tragedies of which they see the end-products. Whether this vision of complete prevention can be realized or not, it is certain that proper measures employed in communities would very greatly decrease the number of those who now reach the reformatories.

QUESTIONS AND EXERCISES

1. Trace in outline the origin of separate institutions for the reformation of women (a) in the United States and (b) in England.
2. Outline the development of reformatories for women in the United States.
3. Explain how a severe system of discipline produces prison psychosis
4. Show how unless the prisoner is mentally deranged the development of prison psychosis can be prevented
5. Diagnose the causes of the delinquency of the eighteen-year-old woman described by Mrs Hodder in this chapter. Then suggest a better method of treating than is described in the excerpt quoted
6. Differentiate between the classification system in New York and that in the Federal institution
7. How does the modern treatment of the delinquent woman differ from the former treatment?

CHAPTER XXIX

PAROLE AND THE INDETERMINATE SENTENCE

I. PAROLE

DEFINITION and Purpose. Probation and parole are two different methods of dealing with the delinquent. The word *probation* is used sometimes when *parole* is intended, and vice versa. *Parole* is the release from a correctional institution of an offender who remains under the control of the correctional authorities in the attempt to find out whether he is prepared to live in free society without supervision. Parole is thus the last step in a correctional scheme of which probation may be the first step.¹

A parole system cannot operate by itself, but presupposes a prison or reformatory. Moreover, in order that parole may be effective, the treatment in the prison or the reformatory must prepare for it. Unless the offender has been so dealt with that his attitude toward society is changed, parole in many cases will fail. The aim of both the institution and parole is to restore the inmate to the community as a vital part of it.² Parole is not a method of relieving pressure of the prison population. Its primary function is the final step in the adjustment of the offender to free society. It is part and parcel of a method of treatment which begins with incarceration in an institution based upon careful examination of the prisoner and preceded by successful steps in education for a trade and for free social life in the institution with discipline gradually relaxed as the prisoner shows correction of his behavior.

ORIGIN AND DEVELOPMENT

Origin in England. For adults, parole, as it is known in this country, or ticket-of-leave, as it was called at first in England, owes its origin to the unsatisfactory results of the British system of penal transportation described in a previous chapter. The idea was suggested by Mirabeau in a report he made as early as 1791, in which he urged that prisons should be founded on

¹ Burleigh and Harris, *The Delinquent Girl: A Study of the Girl on Parole in Massachusetts* (New York, 1923), pp. 5-6. For the purpose and meaning of probation see Chapter XXIV of this book.

² "Report of the Committee on Probation and Parole," *Proceedings, American Prison Association*, 1920, p. 50.

the principle of labor, separation, rewards under a mark system, conditional license, and aid on discharge.³ Sir William Molesworth made a report to Parliament in 1838 on the horrors of the transportation system in New South Wales. In that report the suggestion was made that some plan of conditional release such as Maconochie had worked out earlier on Norfolk Island should be put into operation. Before Molesworth's report was made, Sir John Franklin, the Governor of Australia, had started a kind of parole system. Maconochie was secretary to Sir John Franklin, and Clay suggests that it was to Maconochie that Franklin owed his ideas. In this experiment of Maconochie's we find the roots of our present system of parole.⁴

After penal transportation was given up, so great became the crowding in the jails and hulks that it was necessary to find some method of relieving the pressure. Maconochie, in the meantime, had returned home and for a short time was made Governor of the Birmingham Jail. Here he applied his system of classification, marks, and release on ticket-of-leave. Sir Joshua Jebb, head of the English prison system, adopted the ticket-of-leave or parole method of releasing men from the overcrowded jails and convict prisons of England. In the meantime, Sir Walter Crofton had adopted the same idea in the Irish prison system, but with an intermediate stage in which the convicts were prepared for parole by a life of comparative freedom in small groups at Lusk.

The way in which the ticket-of-leave was administered in England gave rise to much criticism. The men were not properly prepared for release, and consequently great numbers of them were released on parole without supervision and some found their way back into prison after again victimizing the public. In Ireland Crofton not only prepared the men by his so-called intermediate stage for release, but used the comparative freedom of that stage to determine whether they were fit for parole. Furthermore when released on ticket-of-leave in Ireland the men were required to report regularly while on parole to the chiefs of police. The result was that the Irish system of parole was very much more successful than the English system and consequently attracted wide attention.

Crofton explained the essential points of the Irish system in a lecture which he delivered at Bristol in 1863. His summary is as follows:

"The convict system pursued in Ireland simplified is.

1. 'Prison training' conduced to the admission of liberated convicts into the home labor market.

³ Ruggles-Brise, *The English Prison System* (London, 1921), Introduction, p. iv

⁴ Clay, *Our Convict Systems*, pp. 14-17.

2. 'Voluntary emigration' practicable by the gratuity every well-conducted convict under any system receives in prison
3. 'Crime rendered a hazardous calling' through the supervision of the liberated convict during the unexpired term of his sentence, and the systematic arrangements made to entail long sentences on prisoners formerly in the convict prisons."

Origin in the United States. Parole in the United States arose from the failure of the penitentiary system described in a previous chapter to reform the inmates. No real advance was made until the reformatory movement grew up about 1870. Such men as Dr. Wines, Mr. Brockway, Mr. Hubbell, and Dr. Dwight were deeply concerned with the poor results which the prisons were giving. By reports and by visits they learned of the remarkable success of the Irish Prison System. In 1867 Wines and Dwight, in a report to the Legislature of New York cited the Irish System as "upon the whole the best model of which we have any knowledge" and expressed the belief that its fundamental principles could be applied in the United States with success. Out of their efforts grew the Elmira Reformatory. When this institution was established the fundamental principles of the Irish System in many respects were written into the law. Here we find, among other features, parole. Thus from Maconochie's experiments in Australia, by way of the Irish System, came into the American correctional system this new device of reforming convicts.

Development in England. In England parole is used in connection with three different legislative devices for the correction of criminals. Parole is granted (1) to those who have been sentenced to penal servitude for grave offenses for which the sentence is at least three years. Paroles are granted only after a certain amount of the sentence has been served. Supervision while on parole is chiefly negative, i.e., the paroled man is required to make monthly reports to the police. This applies also (2) to the habitual criminal who has been sentenced under the Preventive Detention Act passed in 1908.⁵ The third type of offender to whom parole is applied is (3) the so-called juvenile-adult, who corresponds rather closely to our young reformatory offender. Sentenced under the Borstal System Act, he may be paroled and supervised by the Borstal associations, which are subsidized private organizations. In the last two cases, each convict is carefully followed up by representatives of subsidized private associations for after-care.

Development in the United States. In the United States practically all of the States having industrial schools and reformatories for adults provide

⁵ See Chapter XIX, p. 296; or Gillin, *Taming the Criminal*, pp. 234-239

for parole of the inmates, while more than half the States in 1922 had provided parole from prisons.⁶

In the laws of too many of our States parole is treated merely as a form of executive clemency and is granted by the governor or by a board of pardons. This is the situation in twenty States. In twelve others parole is treated as an incidental item of penal administration. Release is granted by State or institutional administrative boards. Only fourteen States in 1927 had created agencies to deal specifically with parole. Six of these relied on part-time, unpaid, or ex-officio boards, while three used the single official to select prisoners for release. Only Illinois, Ohio, Massachusetts, New York, Texas, and the Federal Government had full-time salaried parole boards.⁷

Eighteen of our States attempt to keep in touch with paroled persons by correspondence alone. Seven States attempt to supplement this paper control of the parolee by the use of sponsors, employers, or first friends to guarantee good conduct. Fourteen States have no parole officers and thirteen have only one officer; six others have but two, three, or four each. In only nine States.⁸ do we find any substantial numbers of field agents working under central supervision.⁹

At the present time parole is the most important means by which men are released from imprisonment in the United States. In 1927 of 44,208 prisoners set free by American prisons and reformatories, only 42 per cent had been held to the expiration of their full sentences, while 49 per cent had been paroled, and 9 per cent were released by all other means. In that same year 66 per cent of the releases in California and Michigan, 70 per cent in Pennsylvania, 76 per cent in Ohio, 79 per cent in New Jersey, 83 per cent in Illinois, 86 per cent in New York, 87 per cent in Massachusetts, 89 per cent in Indiana, and 98 per cent in Washington were released by parole. Florida, Mississippi, and Virginia are the only States in which no prisoners are paroled.¹⁰

In 1910 parole of Federal prisoners was provided for, except those sentenced for life, and in 1913 a law provided for the parole of Federal prisoners even though sentenced for life. A number of the States had anticipated the

⁶ Barnes, in *Journal of Criminal Law and Criminology*, XIII, 175 (August, 1922)

⁷ National Commission on Law Observance and Enforcement, No 9, *Report on Penal Institutions, Probation and Parole*, p 133.

⁸ California, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin is experimenting in the use of its State probation officers as parole officers

⁹ National Commission on Law Observance and Enforcement, No 9, *Report on Penal Institutions, Probation and Parole*, pp 135-136

¹⁰ *Ibid.*, p 127

Federal Government in thus extending the possibility of parole or of conditional discharge to life prisoners. In Minnesota, for example, a man sentenced for life may be released on parole if he has served thirty-five years less "good time" allowances; in Wisconsin, after thirty years; in Nebraska, Ohio, and Utah, after having served twenty-five years; in Louisiana, Oregon, and (conditional discharge) Virginia after fifteen years; in Texas after ten years; in California after eight years, and in Kentucky after five years.¹¹

Moreover, recently municipalities have extended parole to the inmates of their municipal institutions. New York, for example, in 1916 set up the first municipal parole commission and appointed a woman as its head.¹²

In only nine States in 1921 had parole been extended to misdemeanants. In these States parole was extended to this class of delinquents only when they were incarcerated in State institutions, not when they were sent to jail.¹³

There is a tendency for States to allow managers of workhouses to parole inmates. So rapidly has parole been extended in the United States that it is doubtful whether the proper supervision has been provided to make it really effective.¹⁴

RESULTS

The earlier estimates published as to the success or failure of those placed on parole must, in the light of more recent studies, be discarded. Earlier studies estimated that parolees were successful in as much as 85 per cent of the cases. Too often these figures were based upon the question as to how many violated the conditions of parole before their discharge. Even in this case the figures were not reliable since they were made up on the assumption that if the parolee were not returned to the institution during his period of parole he was a success. The real question is how these prisoners have behaved themselves not only while on parole but after they have been released from supervision. The results with paroled men should then be compared with the outcome of men discharged directly from the institution.

At the present time there exist the results of only two thoroughgoing and carefully controlled studies of what became of offenders who were placed on parole. The one was made of 510 parolees from the Massachusetts reformatory for men by Dr. Sheldon Glueck and his wife, Dr. Eleanor Glueck. The other was made by Dr. Luman W. Sampson, under the writer's direction, and examined the after-careers of 424 men paroled from the State prison of Wisconsin and the State reformatory of Wisconsin. The study by the

¹¹ *The Survey*, February 8, 1913, p. 633

¹² *Ibid.*, January 8, 1916, p. 415

¹³ *Proceedings, American Prison Association*, 1921, p. 94

¹⁴ *Criminal Justice in Cleveland* (Cleveland, O., 1922), p. 423.

Gluecks in Massachusetts showed that out of 510 men who left the Massachusetts reformatory during the years 1911-22, 80 per cent were not reformed five to fifteen years later. The study by Dr. Sampson, made at about the same time as that of the Gluecks, covered 275 men from the reformatory and 149 from the prison. This study showed that from three to eight years after their release from parole 48 per cent of these 424 had failed. Dr. Sampson's study is significant in that he was able to study the comparative success and failure of those paroled from the reformatory and those paroled from the prison. While the successes of those paroled from the reformatory were 49 per cent, those paroled from the prison were successful in 55.7 per cent of the cases. The rather wide difference in the results of these two studies may be due to the fact that the study by the Gluecks was of men who had been released from parole from five to fifteen years, while Dr. Sampson's study covered those who had been released from parole from only three to eight years. Further studies of the same kind are necessary before we shall be able to arrive at an approximate figure for the whole country.

However, these figures indicate that under the conditions under which the men were trained in the reformatories and prisons studied and the conditions under which they lived when released on parole, great numbers of them failed to become law-abiding citizens of the communities to which they went. Nothing points more clearly to the failure of our correctional methods, including parole, than the results of these careful studies.¹⁵

While the statistical results are indecisive, stories of how parole works illustrate its inherent character. The case which follows is of a man paroled from one of the Illinois prisons:

"Take the case of 'X' He was a fourth termer. He was a yegg, and a good one. He was born in Canada. As a boy he drifted across the lakes into Ohio; from there he found his way to Chicago. He sold papers on the streets. Cold nights he sought shelter in the corridors of business blocks. He was frequently routed out by the club of the policeman and the night watchman. He became anti-social. Bright and energetic, he was picked up by a gang of safe blowers. He was taught to 'boil the soup,' 'soap the door' and lay the fuse. It was his pleasure and pastime to blow open the strong boxes of banks and business houses. He was finally caught by the Buffalo, New York, police and sent to Sing Sing. After serving his term there he returned to his former associations. He next turned up in the Ohio penitentiary at Columbus. After his release from there

¹⁵ Glueck, Sheldon and Eleanor T., *500 Criminal Careers* (New York, 1930), Foreword and Chap. I, Sampson, Luman W., *After-Careers of 424 Paroled Wisconsin Criminals*, A Thesis Submitted in Partial Fulfilment of the Requirements of the Degree of Doctor of Philosophy at the University of Wisconsin, 1933 (Ms.).

he was sent from Chicago to Joliet. A second time he was incarcerated in the Joliet Prison. Then the great war came. The government needed men to build its plants and to manufacture munitions. 'X' was released under parole and sent to the Rock Island arsenal with eight hundred others. During his last term in the Joliet prison he became a nurse in the prison hospital. While on parole at Rock Island the flu filled the hospitals there. A call for help went out. 'X' volunteered to leave his paying job at the arsenal and take a position in the hospital that he might be of assistance in saving the lives of those stricken. Through his indefatigable work, and his genial, patient attitude he won the respect and esteem of all the doctors and the nurses. At the close of the epidemic he was given a position in a manufacturing plant. While there he met a good woman who was the mother of a little girl. He wooed her and they were married. The little child fastened the tendrils of her love about his heart. He worked hard. He spent his evenings at home. He became so valuable a man that when the superintendent was taken away to become general manager of a larger plant he took 'X' with him. To-day, after five years, this fourth term is living a life he had never known. He is reveling in the love and affection of a wife and a child. The circumstances which drove him to the under-world may never arise again. The parole law gave him his chance."¹⁶

The following case is a reformatory girl put on parole:

"A month before her seventeenth birthday a girl was sent to the Industrial School on the charge of being a 'lewd, wanton, and lascivious person.' She had been born out of wedlock and though the father claims her as his daughter he often accused the mother before the gul of going about with other men. The girl herself began to have sex experiences with school boys at the age of nine. At thirteen she was sent to a semi-private reform school. When after two years she was taken home, the matron reported that she had 'abominable habits and all her tendencies were bad.' She remained home about a year working intermittently or going around with extremely bad girls and with marines. Since early childhood she had stolen small sums from her parents; at this time she stole valuable jewelry and clothing from an employer where she had been doing housework. In court, where it was established that she had had immoral relations with several marines, she said that she would rather go to a reform school than to return to her home and was sent to the Industrial School for Girls.

"Here she remained for one year and ten months. She was reported as sly and deceitful, she stole and lied. She had a quick temper, was susceptible to suggestions and was a good worker.

"Two months before her nineteenth birthday she was paroled in a family at housework. During the two years she was on parole eleven housework places were found for her; two boarding homes were used; and she was an inmate of two hospitals, one for mental examination, the other for operation after having

¹⁶ *The Institution Quarterly* (of Illinois), Vol. XV (March, 1924).

induced an abortion. Once she ran away and was gone several weeks. When found she was in filthy condition and had been immoral many times.

"To this wretched, mentally unclean, sexually uncontrolled child the visitor had sought always to give of her cleanest and sweetest thoughts. All to what purpose? When the girl went home a month before her twenty-first birthday the visitor felt that here was a girl being returned to society as marred and twisted as when she was sent out of it.

"Because the visitor felt her own failure in this girl's failure she could not keep from voicing her keen disappointment and regret in her parting words to the girl. 'I am more sorry than I can tell you that I have not been able in these two years to make you see things differently. Now you are twenty-one and will be held responsible for your actions. Before, you were considered a child and sent to a *training school*; now you are a woman and will be sent to *prison* if you break the laws which have been made for the protection of all. If you keep on the way you have been going I am afraid I shall hear from you next from "there"!'

"Several months went by, however, and the visitor did not hear from the girl from 'there'. One raw wintry day the visitor came into the office and found her desk literally smothered under a huge bouquet of brilliant carnations. She asked jocularly of the other visitors nearby, 'What's the celebration?'—and out of a dim corner of the room a little girl made her way to the visitor. 'I wanted you to know that I didn't have to go "*there*" and that I appreciated what you did for me.' This was six months after she had been out of the care of the trustees. A year later the visitor received a letter, the closing sentence of which read:

"Please write me soon and tell me what day you can take off. How I want you to come and meet my hubby."

Your old girl,

EMMA

"P.S. Please when you write don't put any office address on it."¹⁷

The following statement of a convict once in San Quentin is of interest in giving the estimate of parole by one on the inside:

"A man startin' out on parole, with th' prison officers backin' him up an' seein' that he gets a square deal has it all over th' guy what does his time an' goes out without knowin' where he's goin' t' sleep th' first night. I been watchin' th' game a whole lot lately. There's more men comes back after doin' their time an' being discharged with five dollars, an' not knowin' what they'll do when they get out than there is men what have been paroled. Five 'r six second-timers blow in t' each guy what violates parole. Don't that go t' prove that parole is a good thing? An' ain't everybody the gainer when a guy straightens up an'

¹⁷ "She Didn't Go 'There,'" *The Survey*, January 15, 1924, p. 398. See also "When Housework Fails," *The Survey*, January 15, 1924, p. 397.

does th' right thing? What good does it do t' keep me f'r a twenty-year sentence an' then turn me loose t' do as I please, an' not knowin' where I'm goin' r what I'm goin' t' do? An' most fellers feel sore, especially if they've done a long jolt Not only that, but I knows lots o' guys what has families. Some o' 'em do time awful hard, they do more time in a month than us fellers do in a year. Why? Because they keep thinkin' and worryin' about th' wife and kids. What good does it do t' keep a man like that penned up jus' so long, simply because some judge had a grouch on an' handed him five r ten years? It's no wonder so many guys go wrong again. I've talked with lots of 'em what have gone out sore. An' lots o' homes are broken up jus' on that account. Th' woman struggles along, tryin' t' keep her head above water, hopin' she can wait f'r her man t' get out, but it's too much, an' she has t' give up. Lots o' divorces happen jus' that way, because th' woman can't keep herself an' had t' get another man jus' f' that reason.''¹⁸

There is no doubt in the minds of those who have given the most careful study to the matter that if properly administered parole is a most important device in the treatment of the criminal. When it fails, it does so either because the wrong individuals have been selected for parole or the parole officers are inefficient or the community has failed in its attitude toward the paroled prisoner. It cannot be applied to all prisoners, because there are some men who ought never to be released into society. It must be applied with discrimination, with a thorough understanding of the man put on parole and an appreciation of all the influences which go to make or break a socially disabled individual.

Moreover, when it works, it is an arrangement which is very much cheaper than keeping the convict within prison walls.¹⁹

Financial Results. In New Jersey while the yearly per capita cost of institutional care of prisoners was \$562.10, the cost of care on parole was only \$20.43.²⁰ In New York, which has perhaps the most elaborate and costly parole system in the United States, in 1931 it cost to maintain a prisoner in an institution \$450.38. The approximate cost of supervising a prisoner on parole for a year in that State was \$80.67.²¹ "The approximate cost per prisoner per year for the Western Penitentiary at Pittsburgh, including the Rockview Branch in Center County, is \$534. (This includes upkeep

¹⁸ Lowrie, *My Life in Prison* (New York, 1912), p. 129.

¹⁹ "Eighteen Years' Experience with a Parole Law," *The Survey*, July 3, 1915, p. 301.

²⁰ National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole*, p. 311.

²¹ Division of Parole of the Executive Department, New York, *Second Annual Report* (Albany, N. Y., 1931), p. 23.

and repairs but not new buildings or ultimate replacement) The per capita cost of parole for the State of Pennsylvania (from figures supplied by Mr. Courtland Butler, supervisor of paroles) is \$34 89." "There is also a saving to the county in court costs and costs of prosecution. Men on parole, who are not willing to conform to the dictates of society, can be speedily removed without recourse to the ponderous system of court and criminal prosecution "²²

For a period of years studies have been made of the success and failure of delinquents and criminals on parole.²³ More recently there have been attempts to set up a series of tables on which prediction of success or failure of parole might be based. With the validity of these tables we are not here concerned.²⁴ They give promise of providing information in advance to guide parole authorities in the selection of parolees.

²² L W Kolakoski and T. W Biecker, "The Pennsylvania Parole System in Operation," *Journal of Criminal Law and Criminology*, September-October, 1932

²³ Clark, "Supervised Conduct Response of Delinquent Boys," *Journal of Delinquency*, May, 1921, pp 387-401, 393-394, Flexner and Baldwin, *Juvenile Courts and Probation* (New York), p 149, Burkh, "Some Principles of Parole for Girls," *Journal of Criminal Law and Criminology*, November, 1918, p 400, Clark, "Success Records of Delinquent Boys in Relation to Intelligence," *Journal of Delinquency*, September, 1920, pp. 177-181, Warner, "Factors Determining Parole from the Massachusetts Reformatory," *Journal of Criminal Law and Criminology*, August, 1923, pp 190, 192, Heacock, "A Study of One Year's Parole Violators Returned to Auburn Prison," *Journal of Criminal Law and Criminology*, July, 1917, pp 253-258, Clark, "Success Records of Prisoners and Delinquents," *Journal of Delinquency*, July, 1921, pp 450-451; Pinter and Reamer, "Mental Ability and Future Success of Delinquent Girls," *Journal of Delinquency*, March, 1918, pp. 74-79.

²⁴ See Hart, "Predicting Parole Success," *Journal of Criminal Law and Criminology*, November, 1923, p 405 ff Bruce, Harno, Burgess, and Landesco, *Workings of the Indeterminate Sentence Law and the Parole System in Illinois*, A Report to the Honorable Hinton G Clabaugh, Chairman, Parole Board of Illinois, 1928, Part IV, same report was published in the *Journal of Criminal Law and Criminology*, May, 1928, Part II See also Burgess, "Is Prediction Feasible in Social Work? An Inquiry based upon a Sociological Study of Parole Records," *Social Forces*, June, 1929, p 533 ff Glueck and Glueck, "Predictability in the Administration of Criminal Justice," *Mental Hygiene*, October, 1929, pp 678-707, this article is published as Chap 18 in the same authors' *500 Criminal Careers* (New York, 1930) Vold, *Prediction Methods and Parole* (Minneapolis, 1931), Chap VI, see also the same author, "Do Parole Prediction Tables Work in Practice?" *Publications of the American Sociological Society*, May, 1931, pp 136-138 Tibbitts, "Success or Failure on Parole Can Be Predicted A Study of the Records of 3000 Youths Paroled from the Illinois State Reformatory," *Journal of Criminal Law and Criminology*, May, 1931, pp 11-50 Sampson, *After-Careers of 424 Paroled Wisconsin Criminals*, A Thesis Submitted in Partial Fulfilment of the Requirements for the Degree of Doctor of Philosophy at the University of Wisconsin, 1933 (Ms.).

RELATION OF CERTAIN CONDITIONS TO SUCCESS OR FAILURE IN
PAROLE AND POST-PAROLE PERIODS

A number of attempts have been made to ascertain scientifically whether there is any connection between certain conditions in the prisoner himself or in his circumstances which account for his success or failure on parole.

Of these various studies only two, the study by the Gluecks and the study by Sampson, attempted to determine the condition of success or failure by a study not only of the period of parole but also of the post-parole period. These two studies give some indication of the factors which make for success after the man has been discharged from parole. Some of these conditions are to be found in his pre-commitment career, some during his period in the institution, some during his period of parole, and some during the post-parole period. The most complete of these two studies is that by the Gluecks. The study by Sampson has the merit that it includes not only reformatory but also prison parolees.

The following list of twenty-three items from the Gluecks' study give the most significant conditions bearing upon post-parole success:

Prior to commitment:

- 1 Fairly met economic responsibility
- 2 Greater age at commission of first offense
- 3 No arrests preceding commitment to reformatory
- 4 Lack of offenses preceding commitment to reformatory
- 5 No previous penal experience
- 6 Good physical conditions at entrance to reformatory
7. Good mental conditions at entrance to reformatory
- 8 Good work habits at entrance to reformatory

In institutions and on parole:

- 9 Occasional or no institutional offenses in reformatory
- 10 None or less serious institutional offenses in reformatory
- 11 Little or no mobility in post-parole period
- 12 Regular church attendance in post-parole period
- 13 The larger the number of children, the more successful
- 14 The greater the industrial skill, the greater the success
- 15 Success during parole

In post-parole period

16. Good family relationships
17. Compatibly married

- 18. Favorable hours
- 19. Favorable home neighborhood
- 20. Good work habits
- 21. Economically comfortable
- 22. Good economic responsibility
- 23. Constructive use of leisure time

Sampson's list provides only three in addition to these. These three are: (1) Those paroled from prison show a greater degree of post-parole success than those paroled from the reformatory. (2) Those who came from urban communities showed greater post-parole success than those who came from rural communities. (3) Those who remained on parole a longer period showed the greatest degree of post-parole success. These findings of Sampson may be peculiar to Wisconsin and may not be of universal application.²⁵

PRINCIPLES OF PAROLE

If parole cannot be applied to all offenders and if its history has shown a considerable number who fail, what are the principles upon which it should be conducted?

1. *Careful Diagnosis of the Prisoners.* We have seen how important it is that the man who has been sentenced to prison should have a careful examination of his physical condition, his mental states and attitudes, and his social history. Even more important is the information obtained by such an examination in the case of men who are about to be paroled from the institution.

In a number of our States at the present time, including New Jersey, New York, Massachusetts, Wisconsin, California, and Minnesota, such information is obtained either in connection with what is called the classification committee in each institution or by a parole board through its investigators. The last ten years have seen considerable progress in the development of a technique of providing information on those appearing before the parole board for release. With more careful diagnosis it will be much more feasible than it ever has been for the parole board to determine those who should be released on parole.²⁶ Most of the criteria upon which parole boards now

²⁵ Glueck and Glueck, *op. cit.*, pp. 256-258, 276, 277, Sampson, *op. cit.*, Chap. 9.

²⁶ Doll, "Classification of Prisoners for Purposes of Training Work and Parole," *Journal of Criminal Law and Criminology*, XIV, 110 ff (May, 1923), Barnes, in *Journal of Criminal Law and Criminology*, XIII, 186-187 (August, 1922). See also Jacoby, "The Psychopathic Clinic in a Criminal Court, Its Uses and Possibilities," *Journal of the American Judicative Society*, VII, 25 (June, 1923); Shepherd, "The Psychopathic Laboratory," *Journal of Criminal Law and Criminology*, XIII, 485 (February, 1923), National Commission on Law Observance and Enforcement, No. 9,

base their decisions, without such careful examination as indicated above, have been shown to be practically worthless.²⁷

2. *Selection for Parole of Only Those Inmates the Study of Whom Shows That They Will Probably Do Well on Release.* This principle is in contrast to one which is usually followed by parole authorities. In most States where there is a parole law it provides for parole only for those prisoners who have not been guilty of the more serious crimes. Modern penology based upon a study of the experiments in parole has made the discovery that it is not the crime so much as the offender and his history, with all that concerns him, which should be the principal thing in considering parole.²⁸

3. *Selection for Parole of Only Those Whose Release Will not Outrage the Sense of Justice of the Community from Which They Came.*²⁹ Another precaution to be taken is that, no matter what the facts about the offender himself show, if parole would outrage the community's sense of justice it would be inadvisable to release the man because thus the whole system of parole might be endangered.³⁰

4. *Proper Employment Should Always Be Secured Before a Convict Is Paroled.* Lack of employment is one of the most important causes of crime. Therefore securing proper employment is a fundamental principle of parole unless the man is to be assured of failure from the beginning.

5. *Placement in Proper Surroundings.* Many of these men have come from sordid environments. If they are released and allowed to return to such surroundings, experience indicates that there is very great danger of relapse. Whether the parolee should be returned to his own home can be determined only on the basis of a careful study of the community and the home from which he came, by properly experienced and trained parole officers.

Report on Penal Institutions, Probation and Parole, pp 308-322; Wilcox, "The Open Door," *Annals of the American Academy of Political and Social Science*, September, 1931, pp 102-112; Gehlke, "Testing the Work of the Prison," *ibid*, pp 121-130.

²⁷ Warner, "Factors Determining Parole from the Massachusetts Reformatory," *Journal of Criminal Law and Criminology*, XIV, 172-207 (August, 1923). After studying the Massachusetts parole system, which is supposed to be one of the best in the country, Mr Warner said, "The worthlessness of most of the information now supplied to the board should be apparent." He also showed that in the history of Massachusetts Reformatory there is very little connection between conduct in the reformatory and success on parole. Conduct in the reformatory, however, was judged by the parole board on the basis of how many demerit marks the man had received rather than upon a careful study of his conduct.

²⁸ *Journal of Criminal Law and Criminology*, XIII, 265 (August, 1922).

²⁹ Butler, "What Prisoners Should Be Eligible to Parole and What Considerations Should Govern the Granting of It?" *Journal of Criminal Law and Criminology*, XII, 549-553 (February, 1922).

³⁰ *Ibid*, p 553.

6. *The Institution Must Prepare for Parole.* The institution and parole with adequate supervision are parts of one whole for the correction of the prisoner. The work of the psychopathic clinic or of the receiving station, of the social worker in connection with the institution, of the prison officials, and of the parole board and parole officers must be coördinated in the purpose of reforming the ideals and habits of the prisoner. Parole is only one part of this plan. This ideal was present in the mind of Crofton as he set up his Irish prison system.³¹ In a number of States the attempt has been made to coordinate the work of the institution closely with that of the Parole Department.³²

7. *Careful Follow-Up Is Absolutely Necessary.* The growing tendency is to emphasize the importance of careful follow-up with frequent contact, advice, friendliness, and careful efforts to help the man in his new relationships.

8. *Cooperation with Private and Public Social Agents.* In some States most of the actual parole work is done by private organizations, supervised by the Parole Board or Commission. This plan should be used chiefly as a supplementary aid to the public officials. Often, however, the parole officer will find the private agencies most important sources of information and most helpful in working out the parolee's family problems.

9. *Populous States Should Have a Full-Time Paid Parole Board, or if an Unpaid Board, a Full-Time Staff.* Unification of parole methods and adequate supervision of parole officers seem to be impossible without a board charged with the responsibility of properly administering parole.

10. *This Board Should Be Composed Not of Political Appointees But of Men of Intelligence and Integrity Having Experience in Such Matters.* One reason why parole has not been a greater success in this country is the character of the parole officials, especially of the board. Too frequently they have been political appointees selected with reference to their party regularity and usefulness rather than for their understanding of the work.³³

11. *The Responsibility for Paroles Should Rest upon This Board.* Too frequently the legislature has circumscribed the activities of the board by laying down certain conditions under which parole may be granted, such as limiting its operation to first offenders, or to those not convicted of serious crimes, or by other more detailed regulations of the methods to be employed.

³¹ Carpenter, *Reformatory Prison Discipline as Developed by the Right Honorable Sir Walter Crofton in the Irish Convict Prisons* (London, 1872), Chaps 1-4.

³² Doll, *loc. cit.*

³³ Colvin, "What Authority Should Grant Paroles? If a Board, How Should It Be Composed?" *Journal of Criminal Law and Criminology*, XII, 545-548 (February, 1922).

In this matter legislation should follow the same course as in regulating for industry. Experience in both the labor field and penology suggests that the board should be constituted and given practically absolute power under a very general law in order that its members may have free scope for all the ingenuity they may possess in administering parole. Parole boards themselves frequently limit their activities by rather rigid rules.³⁴

12. Parole Success Is Connected with the Extension of the Indeterminate Sentence. Frequently a man is released on parole and fails to do well apparently because he knows that the end of his sentence is near. Parole ends before the process has been completed by reason of the fact that the maximum of the sentence for which he was sent to the institution has expired. The Supreme Court of North Carolina has held that the State in the case of lesser offenders has a life jurisdiction over a prisoner released on conditional pardon or parole.³⁵ Penological and legal thought is moving in the direction of making the whole procedure of treatment of the criminal, including parole, the function of an administrative board.

13. Parole Officers Must Be Numerous Enough and Sufficiently Trained to Give Adequate Supervision. "To make effective these principles of parole, too much stress cannot be laid upon the personnel of a parole department. Every member of such a department should have had a liberal education and specific social service training. Even more important are certain personal qualities in the worker which are essential to the success of the undertaking: good will, good temper, good judgment, and good sense; open-mindedness and tolerance; sympathy and imagination; a sense of humor; love and faith in the onwardness of human nature."³⁶

II THE INDETERMINATE SENTENCE

Closely connected with the subject of parole is the indeterminate sentence. Logically there is no connection between the two, but historically in the United States they originated together. There are those who believe that parole can never be successful without the absolute indefinite sentence. As we have seen, there are distinct advantages in having the sentence so in-

³⁴ Lyon, "What Should Constitute a Violation of Parole?" *Journal of Criminal Law and Criminology*, XII, 554-557 (February, 1922)

³⁵ "Revocation of Parole after Expiration of Sentence," *The North Carolina Law Review*, June, 1922, pp. 46-48

³⁶ Burleigh and Hairis, *The Delinquent Girl*, Studies in Social Work, Child Welfare Series, Monograph No. 3 (New York, 1923), p. 118. For a good statement of fundamental principles in parole, see National Commission of Law Observance and Enforcement, *op. cit.*, pp. 324-326, see also "On Parole," *The Survey*, January 15, 1924, pp. 397-399.

definite that the process of rehabilitation under parole may be continued long enough to make certain its effects.

History of the Indeterminate Sentence. Preceding the movement for an indefinite sentence was a movement early in the nineteenth century for the commutation of sentence for good behavior. In the '60s, due to the influence of the Irish prison system upon American prison reformers, agitation began for the establishment of an indeterminate sentence. The same men were interested in this project as in parole.³⁷

Archbishop Whately in 1832 recommended a kind of indeterminate sentence. He wrote, "It seems to me perfectly reasonable, that those whose misconduct compels us to send them to a house of correction, should not be again let loose on society, *till* they shall have given some indication of amended character. Instead of being sentenced, therefore, to confinement for a certain fixed time, they should be sentenced to earn, at a certain specified employment, such a sum of money as may be judged sufficient to preserve them, on their release, from the pressure of immediate distress, and orderly, decent, submissive behavior during the time of their being thus employed, should be enforced, under the penalty (besides others, if found necessary) of a proportionate deduction from their wages, and consequent prolongation of their confinement."³⁸

In 1869 under the influence of the prison reformers New York had passed a law authorizing the construction of the Elmira Reformatory. Mr. Brockway, who was called from Detroit to be the superintendent, was instrumental in having the legislature of New York pass the so-called indeterminate sentence law.³⁹

The following year the first meeting of the American Prison Congress was held in Cincinnati, and there Mr. Brockway read a paper giving his ideas. This paper produced such an impression that the Declaration of Principles adopted at that meeting demanded the indeterminate sentence. Principle 9 is as follows: "Peremptory sentences ought to be replaced by those of indeterminate duration, sentences limited only by satisfactory proof of reformation should be substituted for those measured by mere lapse of time. The abstract justness of this principle is obvious; the difficulty lies in its practical application. But this difficulty will vanish when the administration of our prisons is made permanent and placed in competent hands. With men of ability and experience at the head of our penal establishments, holding their

³⁷ Cass, "A Study of Parole Laws and Methods in the United States," *Proceedings, American Prison Association*, 1921, pp. 272, 273.

³⁸ *Thoughts on Secondary Punishment* (London, 1832), pp. 36, 37.

³⁹ Brockway, *Fifty Years of Prison Service* (New York, 1912), pp. 126, 133.

offices during good behavior, we believe that it will be little, if at all, more difficult to judge correctly as to the moral cure of a criminal than it is of the mental cure of a lunatic."⁴⁰

Most of the States which have adopted the indeterminate sentence have followed New York's example and limited its duration. Thirty-eight of the States in 1925 had statutory provision for the indeterminate sentence in some form. In four of the States the sentence was indeterminate as to the term of imprisonment but providing in substance that the sentence should be taken as being for an indefinite period not less than the minimum nor more than the maximum term fixed by the statute for the offense of which the prisoner was convicted.⁴¹ An absolute indeterminate sentence has been adopted by no State either for adults sent to prison or for those sentenced to the reformatory. The nearest approach in practice is in Illinois, which provides that the sentence for some crimes shall be one to fourteen years, for others one to twenty-five years, and for still others one year to life.

From 1925 to 1927 appeared a tendency for the legislatures of a few States to restrict in some respects the use of the indeterminate sentence. Since 1927 there has been a tendency to liberalize the laws governing the indeterminate sentence in several of the States. The consequences of this tendency and of the spread of information as to the results of the indefinite sentence has been its increasing use by the courts.

Evils of the Limited Indeterminate Sentence. It was seen early that the limited indeterminate sentence had some grave defects. Mr. Brockway, in speaking of an inmate at Elmira who was school secretary, says:

"This school secretary . . . came to the reformatory in May, 1880, under the name of Macauley, an Englishman whose ancestry and previous personal history could not be easily traced. His crime was burglary, second degree, which involved a possible maximum term of imprisonment of ten years. Tall, bearded, athletic, and symmetrical, with a reserved, dignified mien, neither confidence nor suspicion was suggested on a casual acquaintance. In his possession was a certificate in his name of a degree from Oxford University, and as afterwards appeared he was in fact a fairly educated man. He earned and received his parole in a minimum of time by the rules, that is to say, in June, 1881. But for violating the conditions of parole he was arrested and returned to the reformatory in November of that year. After sixteen months, in May, 1883, he was the second time paroled on condition that he take employment at the re-

⁴⁰ Henderson, *Prison Reform and Criminal Law* (New York, 1910), p. 48; *Proceedings, American Prison Association, 1920*, p. 32.

⁴¹ Lindsey, "What Should Be the Form of the Indeterminate Sentence and What Should Be the Provisions as to Maximum and Minimum Terms, If Any?" *Journal of Criminal Law and Criminology*, February, 1922, p. 534.

formatory on agreed wages, to remain thus more immediately under our supervision. He was made secretary of the schools, librarian, and editor of *The Summary*, which he originated and organized. He instructed a class in drawing, lectured to five hundred upper class inmates on the history of art, edited the annual report of the managers and officers to the legislature, and edited pamphlets on penology prepared for distributing information about this new institution to the citizens of the state and abroad. While thus employed on parole he married and lived in nearby apartments outside the reformatory.

"In February, 1884, on complaint of his wife, Macauley's parole was again cancelled and he was placed in custody within the enclosure and put in the initial grade of prisoners, still exercising his school, secretarial, and other functions. In August, 1885, he was the third time paroled and employed on wages and remained in such relation for fifteen months, until November, 1886. After six years with us, the influence of the 'indeterminate sentence' gradually weakening by its fault of having a maximum limit, the parole condition was changed, and he took employment in New York City. He endured for a while, but failing to make his monthly certified report of himself, he was on our order arrested in New York in April, 1887. His blandishments induced the magistrate to discharge him before our officer arrived to take charge of him, and we lost sight of him, and he was beyond our further authority at the expiration of the ten years' maximum, May, 1890.

"Macauley typifies an exceptionally small class of incorrigible criminals. Such offenders, could they be committed under the absolute indeterminate sentence plan, would be continuously held under enough of custodial restraint to protect the public, and it would also be promotive of their own individual welfare. If thus conditioned their capabilities may be made available for the benefit of others also in custody, as was the case during Macauley's parole and employment at the reformatory."⁴²

The maximum limit prevents the carrying-out of the purpose of a correctional institution, viz., to keep the man for the protection of society until he has been so trained that he can be released with safety to society and with the promise of complete reformation.

Arguments against the Absolute Indeterminate Sentence. In spite, however, of the evils of the limited indeterminate sentence, there are those who believe that an absolute indeterminate sentence is unwarranted in the present state of society. For example, Judge Lindsey, who has been prominent in the American Prison Association and in the Institute of Criminal Law and Criminology, after arguing (a) that "there would seem to be a sufficient time within the maxima fixed by law for the reformatory treatment to take effect if it is ever going to; (b) that the prospect of release

⁴² Brockway, *Fifty Years of Prison Service* (New York, 1912), pp. 263-265

on parole would seem to offer sufficient incentive to the prisoner serving under a definite sentence; (c) that it is problematical whether to make the inmate's release absolutely dependent on the prison authorities would tend in any way to develop moral fiber," says, "No matter what the merits of the arguments for the absolute indeterminate sentence, public sentiment will not approve a sentence without a maximum limit, until reformatory methods have been developed to a much higher degree than at present."⁴³

The Absolute Indefinite Sentence Waits on Better Parole Methods. It seems quite clear that the lawmakers, reflecting the sentiments of the people, will not give any parole board absolute authority in the termination of a sentence until parole officials have shown that they are capable of doing a better piece of social engineering than the present courts. Says a recent report:

"The committee believes that the line of expansion of law in matters of sentence should be a gradual extension of the Indeterminate Sentence Law in place of the fixed sentence. No substantial progress along this line is likely to occur until the judges, as well as the Legislature, are satisfied with the wisdom and efficiency of the methods of determining the duration of imprisonment in the prison, by or through prison officials. This means the intelligence of the working methods of the board of pardon and parole will be the criterion governing future progress in indeterminate sentence legislation."⁴⁴

Short Sentences. The evil of the short sentence as a correctional measure has been long appreciated. Says Robert Anderson:

"In the great majority of cases a short sentence does only harm. If the offender has a family dependent on him, it too often leads to breaking up his home. A more useful and merciful alternative would be to impose a longer sentence, and to allow him by his industry to keep his home together during his imprisonment."⁴⁵

Other reports on the English Prison System bear testimony to the same evils of the short sentence.

Perhaps the clearest pronouncement upon this theme is to be found in Sir E. R. Brise's contribution to the 1910 International Prison Congress:

"A succession of short sentences, it may be for trivial offenses, under the ordinary prison régime, as devised for adult prisoners, has a tendency rather to

⁴³ *Loc. cit.*, pp. 536, 537

⁴⁴ *Prison Survey Committee Report, State of New York* (Albany, N. Y., 1920), p. 250; see also *National Committee on Law Observance and Enforcement*, No. 9, *Report on Penal Institutions, Probation and Parole*, p. 145

⁴⁵ Anderson, *Criminals and Crime* (London, 1907), p. 152.

accentuate than to arrest the habit of crime. They are costly to the state and prejudicial to the individual, and an almost certain prelude to his complete and irretrievable downfall.”⁴⁶

The tendency of modern penological thought is toward sentencing for an indefinite period, placing the responsibility for release on parole and ultimate discharge in a carefully selected board who shall base their judgments upon a thorough knowledge of all the facts concerning the prisoner and his community. If that tendency realizes its logical outcome, both definite sentences and short sentences will be done away with, and the prisoner himself will determine the length of his sentence. This is in accordance with sound penological theory. There is no social reason for releasing a man from safekeeping until society can be assured of its security from his menace.

What Happens to Discharged Convicts? Closely connected with the problem of parole and of the indeterminate sentence is that of the after-care of the discharged convict. In most of our States to-day the non-paroled convict is discharged at the end of his term less “good time” with a prison-made suit of clothes, a ticket to the place from which he was sentenced, and a small amount of money varying from five to ten dollars. If the prison provides for a payment of wage to prisoners while in the prison, he may also have some earnings of his own.

These men face an unfriendly world without any one to see that they have employment, to look after them and give them advice, and consequently many of them have a hard struggle to obtain a footing in the outside world. The result is that many of them relapse into crime. How many we do not know. Doubtless the lack of after-care accounts for many a man’s downfall.

This situation has led to the organization in a number of States of what are variously called Howard Associations and Prisoner’s Aid Associations. They provide a home to which discharged convicts may come and remain until they find a position. Those in charge help them to find employment, advise them, and make efforts to see that they “go straight.” These organizations are doing good work, but of course they can only touch those who come to them.

If the State is interested in seeing that men do not relapse into crime when they leave the prison and reformatories, it ought to provide supervision for them for some time after discharge. If we had the absolute indefinite sentence, only those would be discharged who could be let out on parole. Then the parole officer would handle the whole problem. Until

⁴⁶ Hobhouse and Brockway, *English Prisons Today* (London, 1922), p. 80

we get that, the State can do no less than to provide help for those who desire it. This could best be handled by the parole officers who are now used for paroled prisoners.

As I shall suggest in the chapter on courts, the function of determining how long the convicted person must remain under the control of those dealing with prisoners should be determined not by the legislature nor by the court itself but by a body constituted by the legislature and given the power to administer treatment in the interest of the security of society and the welfare of the individual prisoner. No legislature and no court is wise enough to determine beforehand how long an offender should be kept under surveillance for the welfare of society. Only an administrative board can do such delicate work and then only on the basis of thorough knowledge of the individual. That means the indeterminate sentence, or rather indeterminate treatment, terminated on the basis of facts actually ascertained concerning the individual prisoner. That would provide indeterminate parole as well as indeterminate sentence or indeterminate probation, all based upon the judgment of this authority as to when it is safe for the prisoner to be released entirely from custody.

QUESTIONS AND EXERCISES

- 1 What is the distinction between parole and probation?
- 2 Why are they often confused?
- 3 Outline the origin and development of parole
- 4 What was Crofton's contribution to parole?
- 5 How did parole in Ireland differ from parole in England?
- 6 Give a figure showing the measure of parole success
- 7 Can you suggest any way in which the case of the reformatory girl cited in this chapter could have been better handled? What do you think changed her career?
- 8 What conditions seem to affect the success of parole?
- 9 Suggest ways in which the present indeterminate sentence may be improved.

PART V
THE MACHINERY OF JUSTICE

CHAPTER XXX

THE POLICE

WHEN a crime has been committed, the offender must be discovered, apprehended, tried in a court of justice, and then dealt with by one or more of the various methods we have studied in preceding chapters. Naturally we begin with the police, using that term to cover the ordinary officer who walks the beat, the officers of the force, and the detectives whose business it is to discover the culprit when he has not been taken in the act.

ORIGIN AND DEVELOPMENT

Originally the word *police* meant the internal economy of a nation, or the internal arrangement of government. In a secondary sense the term meant the instrument by which the regulations of government were enforced. Even when Blackstone published his famous *Commentaries* in 1765, the narrower meaning had not been invented. He wrote, "The public police and economy must be considered as the due regulation and domestic order of the kingdom whereby the individuals of the state, like the members of a well-governed family, are bound to conform to the rules of propriety, good neighborhood and good manners."¹ The same meaning is to be seen in the works of Hume and Adam Smith. The limitation of the meaning to a body of officials charged with keeping the peace is attributed to certain French and German writers.²

In England. In England the word was first used in the restricted sense in which it is now employed in an act of Parliament of 1787 which established a constabulary system for Ireland.

The function of the modern police is to be traced back to the ancient constables and night watchmen of England. Blackstone is authority for the statement that the English borrowed the constable from the French. The original peace officer of communities in England was the justice of the peace.

¹ *Commentaries*, 10th Edition (London, 1787), IV, 162, quoted in Fosdick, *European Police Systems* (New York, 1916), p 3

² Palgrave, *Dictionary of Political Economy* (London, 1910), Vol III, Article "Police"

As such he had both the judicial and the administrative functions of the modern police. However, the Statutes of Westminster in the reign of Edward I ordained that in every hundred two constables should be chosen, who came to be known as *high* constables. These were charged with the peace of the hundred, while those charged with the peace of the parish or township were called *petty* constables.

These officers charged with the duties of "watch and ward," as preserving the peace is called in the ancient statutes, were quite satisfactory so long as the conditions of living were simple. But when cities developed and people moved about from one community to another, the increasing complexity of life made it impossible for the constables to deal adequately with the problem of crime. So critical had become the situation near the close of the eighteenth century that committees of the House of Commons in 1772 and 1793 called attention to the need of a better system of protecting the public. In 1812, 1817, 1818, and 1822 other committees of the Commons reported conditions which demanded other arrangements than the ancient local constables. One of the English magistrates, Dr. Colquhoun, before the end of the eighteenth century had called attention to the matter in a book, *On the Police of the Metropolis*. Finally in 1828 another committee of the Commons, appointed at the instance of Peel, then the home secretary, to inquire into the causes of the increase of crime and the relation of that increase to the methods of the constables, brought in a report which frankly urged that a change should be made in the method of protecting persons and property in the Metropolis. In the following year, 1829, was passed the famous metropolitan police act, which established for London a police force separate from the old constabulary and which served as the model for the later laws providing for police forces for the various cities and counties of England and Wales, and later for the whole United Kingdom.

This act fathered by Peel, which at first was strenuously opposed, has had great influence all over the world in the development of the police. To the opprobrious names given to these police by the enemies of the measure we owe the familiar designations of the London policemen to this day. Because the act was sponsored by Sir Robert Peel, the policemen at first were called "Peelers" and "Bobbies." By the last term they are still known.

In the United States. In the American colonies the influence of English precedents is to be seen in the parish constables and the "night watch" made up of civilians taking their turn in guarding the community. Boston established its night watch in 1636. The other cities of the Atlantic coast followed the same custom. Even the Dutch of New Amsterdam had their "Schout" and "Ratelwacht" (rattle-watch so called from the rattle

which the watchman carried about with him).³ When the English took over New York, they established the English system of constables and watchmen in the Dongan Charter of 1686. Evidence has been found to show that practically the same system was established in all the early colonies.⁴ This system of constables and night watchmen continued for about a century and a half before the growth of cities and the complexity of life here, as in England, showed the incapacity of the system to deal with changed conditions. Frequent reports are found of watchmen asleep, of the difficulty of getting the citizens to take their turns as watchmen, of the appointment of political henchmen, of drunkenness and crime among the watchmen, and of lack of coordination between members of the force in the different parts of the city.

Moreover, with the growth of cities it became necessary to provide for peace officers for the daytime. The constables might serve very well in the country for the serving of summonses and other papers, but they were men otherwise employed and could not give all their time to the work of preserving the peace and catching criminals. Hence, early in the nineteenth century several of the larger cities developed a day police separate entirely from the night watch. Philadelphia, stimulated by the provision in Stephen Girard's will of a sum of money to provide that city with "a competent police," passed an ordinance providing for a day police force of twenty-four and 120 night watchmen. Unfortunately this ordinance was repealed in 1835, and the system was not reestablished until thirteen years later. Boston adopted the plan of day police in 1838. New York and Cincinnati followed with similar organizations soon after. Soon some of the police in certain cities were assigned to night duty, although the night watch continued.

Under the plan of separate day and night police forces evils appeared which were accentuated by the riots which occurred in a number of cities in 1835 and subsequent years. These separate forces were unable to control the mobs. New York in 1844 took the first practical step to correct the evils growing out of the two separate forces. In that year the legislature passed a law establishing "a day and night police," i.e., a unified force under a single direction. This law abolished the watch system, which for so long had been the reliance of the people for protection of person and property at night. Ten years later Boston consolidated the "watch department" with the day police. From this time on all the leading cities of the country followed the example of these two in providing for a unified police system,

³ For illustration see article "Police," *Literary Digest*, December 2, 1922, p. 38. In Tokio, Japan, in 1927 my sleep for the first few nights was disturbed by the policeman's rattle as he went his rounds.

⁴ Fosdick, *American Police Systems* (New York, 1920), pp. 58-60.

under a chief or commissioner often appointed by the mayor—sometimes with the consent of the council—and sometimes elected by the people. Thus developed in the United States the municipal police. The further development in the organization of police departments—the matter of uniforms, which were not generally adopted until after the Civil War, the different kinds of boards governing the police, the methods of choosing the members of the force and the chief, the shifting of control from the municipality to the State and back again, the various experiments to correct the evils discovered in the American police forces—there is no space to trace.

One outstanding feature of this history in the United States as contrasted with the development in England is the frequency of change in organization of the police. Since the organization of the Metropolitan Police of London in 1829 but one decided change in method of control has been made, while since the foundation of the New York Police in 1844 there have been nine fundamental changes in the organization. Fosdick says that of these nine changes scarcely half were made in good faith.⁵ The rest were the results of political maneuvering.

The Sheriff. Another peace officer who has to do with criminals is the sheriff. In the United States he is a county officer who serves in both a criminal and civil capacity. He apprehends criminals and also serves civil processes and summonses.

This officer can be traced back at least to Anglo-Saxon times in England. Kemble pictures him as one of the head men of the shire or county at that time. He functioned as (1) the head of the county court, probably at first elected by the people, but later appointed by the king, (2) the executor of the decisions of the court, including the execution of criminals convicted of capital offenses, (3) superintendent of the minting of the coins, (4) principal fiscal officer of the county, levying the fines accruing to the king from offenders and collecting the taxes, and (5) leader of the militia.⁶ Gradually the broad powers of this official—civil, judicial, and administrative—have been more and more limited until to-day in the United States practically all his judicial functions, some few of which still remain to him in England, have been taken from him. Certain of his old civil and criminal functions still remain even here; he collects the taxes in some States and conducts sheriff's sales of property sold under a mortgage, or for delinquent taxes. He still takes and holds those suspected of crime, and those sentenced to the county jail. In some States where capital punishment remains he executes

⁵ Fosdick, *American Police Systems* (New York, 1920), p. 115.

⁶ Kemble, *The Saxons in England* (London, 1876), II, 157-166.

the criminal. In many of the more rural counties he is the policeman and the detective for the county. The division of authority between the county sheriff and the police force of a large city located in the same county is likely to result in conflict of authority.

The Marshal. Another peace officer to be found in many American communities is the marshal, often designated as the town marshal, because he is an officer of the town or township. In the smaller places in the United States he often makes arrests for petty offenses and lodges the accused person in the town jail or lock-up.

The term *marshal* is derived from a royal officer who had charge of the horses in late medieval times and goes back to the Byzantine court. As a legal official having to do with courts and criminals, the term is to be traced back to Statute V, Edward III, Chap. 8, where we find a marshal of the king's bench who presided over the Marshalsea Court and was responsible for the safe custody of the prisoners in Marshalsea Prison. Moreover, there was an official known as a judge's marshal of considerable antiquity who made abstracts of pleadings and of indictments for the use of the judge. This official still survives in England, but with different functions. He now accompanies a judge of assize and circuit and is appointed by him at the beginning of each circuit.

In the United States we have the United States marshals, each of whom is executive officer of a Federal court, one or more in each district. He is appointed by the President of the United States, with the advice and consent of the Senate, for four years. The term is also applied sometimes to special officers, similar to special constables in England who maintain order in times of disturbance. In some Western and Southern States he is a village policeman as distinct from the county sheriff and the constable.

FUNCTIONS OF THE POLICE

By reason of differences either in constitutional conception of function or in social and economic conditions the functions of the police differ from country to country.

Constitutional Differences. The function of the police in England is other than that on the Continent. In England and in the United States the police power of the State in respect to many matters is largely committed to special bodies such as commissions, boards, etc. On the other hand, in the Continental countries of Europe many of these functions are performed by special divisions of the regular police, Insurance Police, Mining Police, Water and Dike Police, Field and Forest Police, Trade Police, Fire

Police, Hunting Police, Health Police, Political Police, Roads Police, and many others.

Differences in Social and Economic Conditions. The composition of the population materially affects what the police are called upon to do. Compare the United States and England. In only fourteen of the fifty largest cities of the United States in 1920 did the native element equal half. Then in our cities we have the Negro and other races. On the other hand, only 3 per cent of London's population or Berlin's was foreign-born, while for Paris the proportion was 6 per cent.⁷

The stage of economic development has a very direct bearing upon the functions of the police. An industrial city has strike problems not to be found in residential cities. Stratification along economic lines leads to class consciousness and possibilities of trouble not to be found where such conditions do not exist.

In large cities crime is a much more serious problem and requires much more careful attention than in rural districts. Police are called upon to perform all kinds of duties in such cities which the officers of the peace in rural communities never have to trouble themselves about.

Furthermore, the temperament of the people and their social customs affect very directly the activities of the police. The sturdy, home-loving, frugal Teuton is much more peaceable than the somewhat excitable Latin from Southern Europe. The Englishman with his long discipline in the orderly process of justice presents an entirely different police problem than that of the Sicilian who for centuries has been accustomed to taking the law into his own hands for the adjustment of private wrongs.

In addition to these factors which condition the function of the police in different countries there are the delays of the law, the technicalities of our courts, and the maudlin sentimentality of the public more or less characteristic of the United States. If prosecuting attorneys do not do their work well, if judges do not support the police in their work, if courts tolerate technicalities of procedure which defeat the ends of justice, if there are delays which make the criminal feel that it is easy to escape his just deserts, then the police are working against conditions which make success almost impossible. Again, if public sentiment does not condemn these faulty practices of our courts and the weaknesses of our laws but supports petitions for pardon from hardened criminals or backs up the freeing of offenders, then the police can do little on our behalf. Again, while we make the police swear to uphold the Constitution and enforce all the laws, we place upon our statute books such a multitude of laws as to make criminal many offenses

⁷ Fosdick, *American Police Systems* (New York, 1920), pp. 4-6

which public sentiment does not so regard. As Fosdick says, "Nowhere in the world is there so great an anxiety to place the moral regulation of social affairs in the hands of the police, and nowhere are the police so incapable of carrying out such regulation."⁸ In every State of this Union there are laws upon the statute books which nobody, or a very small number, really approves, but which were enacted by the legislature at the instance of a small group. They do not command the allegiance of the popular will, because they are not established in the beliefs and traditions of the people and often directly violate the habitual traditions and customs. Instances of these may be seen in the Sunday closing laws, enacted in almost every State, which are almost universally ignored and violated. It has been estimated that there are 16,000 statutes, Federal, State, and city, applicable in a given city. Not even a trained lawyer knows all these laws. How then can we expect the police to enforce them? The consequence is that as a practical matter the police enforce only those laws for which there is a rather keen public demand. There is not a police force in the United States which cannot be convicted of malfeasance in office on the basis of their oaths. The fault, however, is not with the policemen but with the public which insists upon passing this multitude of laws upon all kinds of subjects for which there is no popular backing.⁹

Functions of the Police in the United States. In general we may say that the functions of the police in the United States fall into four different classes: (1) to detect and arrest criminals, (2) to protect the innocent; (3) to prevent crime, (4) to perform certain welfare tasks for society. As in England, so in the United States, the policeman has very few rights beyond those possessed by any citizen. In making arrest he is governed by practically the same rules of the common law as govern the ordinary citizen. If a felony has been committed and if he has reasonable grounds to believe that the man he arrests committed the act, he has the right to make an arrest without a warrant. If, however, the act is a misdemeanor, he has no right to arrest without a warrant, unless he witnessed the occurrence.¹⁰ If he arrests a person illegally, he can be prosecuted for false arrest as can any other citizen.

While the detection of crime belongs to the special branch of the police known as the Detective Bureau, the ordinary policeman must know what kinds of evidence are important so that they may be preserved, and often

⁸ Fosdick, *American Police Systems*, p. 48

⁹ Fosdick, *op. cit.*, pp. 46-57

¹⁰ Woods, *Policemen and Public* (New Haven, 1919), p. 34; Fosdick, *European Police Systems* (New York, 1916), p. 15

he has to act the part of a detective himself. The policeman has no more right before a jury than any other citizen and is subject to the same cross-examination as any one else. He must, therefore, know what kind of evidence is admissible under the law if he expects to convict the accused.

The duty of the policeman is also to protect the innocent as well as arrest the guilty. Often, however, owing to criticism of the police for failing to find the authors of sensational crimes the duty of the police to protect the innocent is forgotten in their zeal to catch the guilty.

Again it is an important duty of the police to prevent crime. The policeman walks his beat, because criminals are not likely to commit a crime when he is present. The efficiency of the police prevents crime by making a city so uncomfortable for professional criminals that they stay elsewhere.¹¹

Again the policeman can prevent crime by educating the public against leaving doors unlocked, urging them to take care in hiring servants, and other measures which will prevent the commission of crime in the homes of the people.¹²

The police can also prevent crime by the proper treatment of discharged convicts. If they know thoroughly the nature of the men, they will know which can be trusted and helped and which of them they will have to watch. Colonel Woods says that the emotional type of prisoner must be watched more closely, since he seems to repeat his crime more easily than the man of hard sense. In our best police systems the policeman is actually helping many of the ex-convicts to go straight.¹³

Again, a function of the police is to take certain steps to secure the safety, security, and welfare of the people. Traffic regulation is one of these measures; others are keeping crowds in order in public places and looking after sanitary regulations, fire prevention, dangerous places in the streets, etc. In these ways the policeman is a kind of people's guardian.¹⁴

THE INEFFICIENCY OF THE POLICE

Discuss the police with almost any one and you meet with criticism. They are charged with being lazybones, ignoramuses, grafters, friends of criminals, themselves violators of the law they are supposed to enforce, and tyrants who persecute the innocent, hound discharged convicts, interfere with

¹¹ Woods, *Crime Prevention* (Princeton, N. J., 1918), p. 23. The estimate of the New York police inspectors as to the effect of their efforts on the diminution of crime varied from 1 per cent to 50 per cent.

¹² *Ibid.*, pp. 38-48.

¹³ *Ibid.*, pp. 91-97.

¹⁴ Woods, *Policeman and Public* (New Haven, Conn., 1919), Chap. 3.

personal liberties, etc. The state of public opinion is such that they can be charged with almost anything and many will believe it.

Many of these charges against the policeman are not well founded; some are well founded, but for them the policeman is not to blame; other charges are well founded, but are natural errors on the part of men poorly trained and mistaken in their zeal to make a record; still others are only too true and deserve very careful consideration.

In addition there are other difficulties which make it very hard for the policeman to live up to his oath and at the same time not break the law. For example, he is faced with the obligation to enforce all the laws, to respect the liberty of each individual, to presume that every person is innocent until found guilty unless he has caught him in the act of committing a crime, and yet is sure to be frowned on by the public if he does not catch the offender and protect the public. In most States the law does not allow the policeman to arrest upon suspicion; yet if he does not do so, in some cases the criminal will escape and the public will not be protected. He has no legal authority to chase suspects out of town, and yet public sentiment will approve such procedure if thereby the community can be rid of some suspicious character. Legally he has no right to stop a man who is carrying a bundle which he may plainly see contains silverware or other valuable objects, unless he knows that a crime has been committed. Yet if a policeman saw such a man in the early hours of the morning sneaking through a back alley, and did not stop him to find out what he was doing, he would be "roasted" in the newspapers the next day.

Furthermore, under the presumption of innocence in both England and this country, the policeman is supposed to warn any man whom he has taken into custody that anything he may say may be used against him at his trial, and he is not supposed to quiz his prisoner or to use any severe measures to induce him to make a confession. The law presumes that the policeman will advise his prisoner's friends or family that he has been arrested and allow him to secure counsel at once. As a matter of fact, however, the policeman knows that unless he secures a statement from the guilty man soon after his arrest, he will probably be unable to get the very best evidence needed for the conviction of the criminal. This gives rise to the infamous "third degree."¹⁵

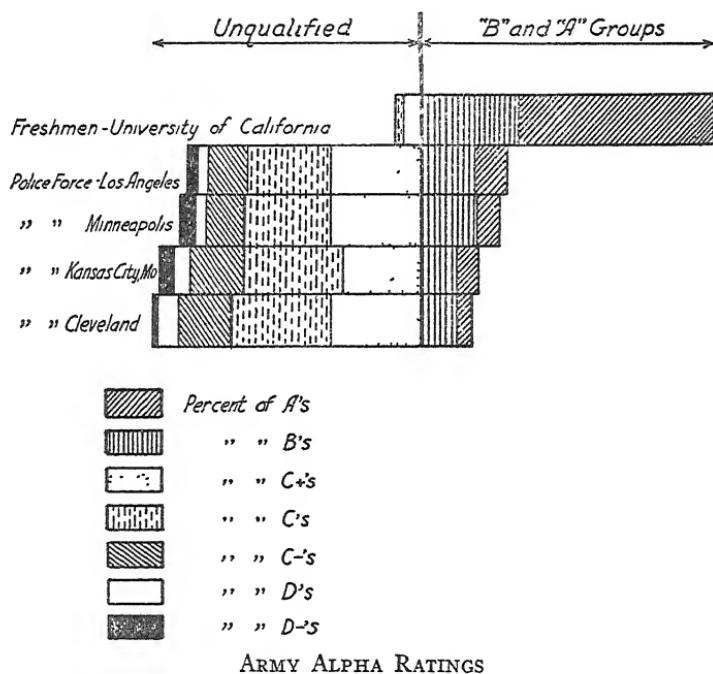
The remarkable lack of intellectual fitness among the police as revealed by the Alpha Army test is shown by the following table comparing the fresh-

¹⁵ See Hopkins, *Our Lawless Police* (New York, 1931), Chaps I-IV, XIII, XVI.

men of the University of California with the policemen of four of our large cities¹⁶:

Group	Number of men	A	B	C	C	C	D	D
		(per cent)	(per cent)	(per cent)	(per cent)	(per cent)	(per cent)	(per cent)
Freshmen, University of California								
Los Angeles police department ..	1,712	9	18	29	28	12	2	2
Minneapolis police department ..	473	7	19	29	27	11	3	4
Kansas City police department ..	623	5	13	24	33	15	6	4
Cleveland police department ..	....	4	13	28	33	15	6	1

Note that, while 60 per cent of the freshmen had "A" rating and 31 per cent "B" rating, 91 per cent being intellectually fit, only 27 per cent of the Los Angeles department, 26 per cent of the Minneapolis department, 18 per



cent of the Kansas City department, and 17 per cent of the Cleveland department were fit. The graph above will make this clear. If the stand-

¹⁶ For table and graph see National Commission on Law Observance and Enforcement, *Report on Police*, No. 14 (June 26, 1931), p. 60.

ard recently established by the Los Angeles Civil Service Commission for Policemen were to be taken as that for police systems of this country, over 75 per cent of the members of the police of this country are not mentally endowed to perform the duties assigned.¹⁷

If the police are unskilled, ignorant, appointed for political reasons, more interested in retaining their jobs than in protecting the public, many of them ready to accept graft for the protection of illegal practices, are the police entirely to blame? Is it not rather the miserable salaries paid them which tempt them to "graft," the public indifference shown in the selection and training of men who guard our property and protect our persons, the public apathy to the technical measures necessary to secure a good police force? Contrast the American and European attitude toward the police force—indifference and criticism on the one hand and interest and pride on the other. Or, compare the apologetic and defensive attitude of American police with the self-respect of European forces. Here again the community is itself to blame, for what attention have we given the subject, except to criticize?¹⁸

The police are blamed for their failure to catch criminals. Certainly, when compared with the European police, our police make a poor showing.

On the other hand, it has been charged that the police in certain of our cities cause needless arrests. The Merriam Crime Commission of Chicago called attention to this matter in 1914. Again in 1922 Miss Abbott tellingly referred to the matter. She gives the following list of arrests to show how needless many of them were:

"Picked up 4 P.M., discharged army three weeks ago"; "just came from Bridewell, discharged"; "sitting in vacant flat, discharged"; "no home, discharged"; "on the street 11:30 P.M., \$25 and costs (House of Correction)"; "walked around Chicago all night. Belongs to 7th Regiment, discharged"; "pool room raid, discharged", "loafing in depot, discharged"; "standing on corner 5:30 A.M., discharged"; "sleeping on roof of building at 1 A.M., discharged"; "on railway property, had fight with officer, discharged"; "on street 12:50 A.M., discharged"; "said 'was picked up because of past arrests'"; "vagrancy, discharged"; "bumming, discharged"; "gang fight, discharged (ran away from Lincoln)"; "out of work 1 month, probation 6 months"; "smoking cigarette in the park, discharged"; "in a restaurant 6:30 A.M., discharged"; "just out of the House of Correction, discharged"; "picked up on suspicion, discharged"; "picked up at 2 A.M., discharged";

¹⁷ *Ibid.*, p. 61

¹⁸ Woods, *Policemen and Public* (New Haven, Conn., 1919), Chap. 1; Train, *Courts, Criminals and the Camorra*, Chap. 1

"‘goofing’ on the corner, discharged”; “climbing up ‘L’ road to get a free ride, discharged”; “on street at 3 P.M., discharged”; “picked up going to work 8:30 A.M., discharged”; “picked up at 10:30 A.M., discharged”; “sleeping in a barn, probation 6 months”; “in an alley between 12 and 1 A.M. Fined \$10 and costs”; “standing on a corner, discharged”; “picked up standing in front of a restaurant, discharged”; “on street at 9 A.M., discharged”; “on street at 5:30 A.M., ‘going to work,’ discharged”; “robbery, C. C., \$2,500. Beaten up by policeman. His eye almost knocked out and wrist broken. Pontiac.”¹⁹ If the police are making unnecessary arrests, they are not only wasting their time, but they are also causing disgrace, humiliation, waste of time and of money to innocent people. This begets a feeling of injustice and makes for criminality instead of preventing it.

That policemen often neglect their duties while on post is evidenced by almost every recent survey of police conditions. Says Fosdick, who made the Cleveland survey, “It was not at all uncommon to find two policemen talking together while on post duty, and carrying on long conversations with citizens while on post seems to be a habit.”²⁰

In some cities, the bad conditions in the police department are due to poor discipline. Whatever the cause, the fact that patrolmen get drunk, neglect duty, sleep on post, engage in gambling, use indecent language, and neglect their duties means an inefficient police force. In Cleveland, Ohio, in 1920, sixty-four members of the force were tried during the year. Of these sixty-four cases, twenty-three were for intoxication and drinking in uniform; eleven were for being off patrol, sleeping, sitting in stores, etc.; eleven were for reporting late and failure to ring duty calls, etc.; thirty-nine had been charged at one time or another with ninety-nine offenses, twenty-four of which were drinking and intoxication, twelve off post, eleven neglect of duty, four failure to prosecute; ten late to roll-call, etc. Of the sixty-four tried, twenty-one were dismissed, six resigned before the date for trial. A policeman who drinks is a menace to the public, and in London intoxication is followed by instant dismissal.²¹

In some cities the detective bureau of the police force is a joke. Fosdick gives the following detective office records in Cleveland:

“1. Detective Cowles and I investigated this complaint, we were unable to locate the men suspected on same”

“2. Detective Cowles and I investigated this complaint; we were unable to learn anything on same”

¹⁹ *Journal of Criminal Law and Criminology*, November, 1922, pp 338-339.

²⁰ *Criminal Justice in Cleveland* (Cleveland, O, 1922), pp 45-46

²¹ *Ibid*, pp 47-48.

"3. Detective Cowles and I investigated this complaint; were unable to get any trace of the thief or property"

"Reports of this type could be instanced almost indefinitely. In many cases they seem to show that the detectives merely verified the fact that a crime had been committed, and beyond asking a question or two of the neighbors, made no attempt to solve the mystery. Under such circumstances the wonder is not that crimes occur in Cleveland but that any perpetrators are ever arrested" ²²

OUTLINE OF AN EFFECTIVE POLICE SYSTEM

Let us briefly consider what elements are necessary in a police system in order to make it effective for the purposes for which it is designed. No matter what the scheme, unless it is manned by people who are vitally interested and intelligent as to what is required and how to get it, it will fail.

Selection of Policemen. The very first requisite of a good police system is that the right kind of material be recruited for the department. Originally in the United States men were appointed to the police force owing to the "influence" of some "boss" or "ward heeler." But with the development of civil service the attempt has been made to apply its principles to the selection of policemen. In 1920 of the sixty-three cities in the United States with a population of 100,000 or over, only ten had no civil service system whatsoever. Thus over five sixths of our cities of this size had adopted civil service to correct the evils of the old system.²³

While the police forces which have been selected by civil service are better administered and better managed than those in which no such system has been adopted, Fosdick is of the opinion that as the civil service has been applied, it has not solved all the problems. Unless it is very materially modified it cannot be used to select men for promotion or as the basis of discipline. It often serves as a bulwark for neglect and incompetence and prevents the "firing" of men who are of no service to the force. He concludes, "If, therefore, civil service could be looked upon as machinery for furnishing raw material, and if the police executive had the unchallenged right to reject, after probation, any candidates who proved unsatisfactory there would be little in this phase of activity which could interfere with the principle of responsible leadership." ²⁴

With civil service as a bulwark against the appointment of incompetent people through political influence, positive measures to ensure efficient selec-

²² *Criminal Justice in Cleveland* (Cleveland, O., 1922), pp 69-70. For police conditions in Chicago see "The Chicago Police Report—Report of the Chicago Civil Service Commission," *Journal of Criminal Law and Criminology*, May, 1912, pp 62-84

²³ Fosdick, *American Police Systems* (New York, 1920), p 270

²⁴ *Ibid*, p. 293

tion are necessary. What progress has been made in devising tests of fitness for the force? It is sufficient to note that wide-awake police heads, like Vollmer, former chief of police of Berkeley, California, have summoned to their aid psychology, the Army Test, and other means to aid them in selecting men with qualifications both of nature and of training for this important position.²⁵

Police Schools. No less important than the selection of the right men for the police force is their training. Until very recently the only training policemen received was what they got after their induction into the service by suggestions from their superiors and by their conversation with older men on the force. Recently, however, it has come to be recognized that even the best endowed by nature may be improved by training.

Europe has had training schools for the police since 1883, when the first one was established in Paris. To-day there is no important European city that does not provide some kind of school for its police recruits.²⁶

In the United States the development of training schools came later than in Europe. A recent study by the National Committee on Law Observance and Enforcement shows that of 383 cities responding to a questionnaire seventy-eight or about 20 per cent have some method of school training. Out of these seventy-eight, only fifteen gave courses which could be considered to qualify the recruit for efficient work. The most outstanding of these police schools are those at Jacksonville, Florida, with two-hour weekly classes over a period of three months; Detroit, with a six-weeks' course, six and one half hours of instruction during the first three weeks and during the final three weeks class-room work continuing in the afternoon, and in the evening apprenticeship with an older member on the beat; Louisville, Kentucky, with four separate courses, one for recruits, one for patrolmen and patrolwomen, one for the detective bureau, and a seminar for officers. The course for recruits provides over a six-weeks' period classes from 8 A.M. to 6 P.M. with additional hours in the evening. The course for patrolmen, patrolwomen and detectives has one hourly session a week for forty weeks. The officers' seminar meets two hours every third week. The New York City police school is the most elaborate in the country. The course covers ninety days, classes being held five days a week for eight hours. Saturdays and Sundays are for actual practice on the beat in the company of an older

²⁵ Vollmer, "A Practical Method for Selecting Policemen," *Journal of Criminal Law and Criminology*, February, 1921, p 571, Martin, "An Aptitude Test for Policemen," *Journal of Criminal Law and Criminology*, November, 1921, p 376 ff National Commission on Law Observance and Enforcement, No 14, *Report on Police*, Chap III

²⁶ Fosdick, *European Police Systems* (New York, 1916), pp 211-212

policeman. Cincinnati has a complete specialized course of eight weeks in extent. Here the apprentice's patrolling is done during the seventh week of training. Berkeley, California, has perhaps the most complete training school for police. It differs most fundamentally from the others in that the greatest emphasis is placed not upon the mechanics of the policemen's duties but upon a knowledge of the fundamentals of human psychology and psychiatry. It is an evening school, meeting three nights a week for two hours in a course covering two years.

The movement is growing, however, to provide training for policemen on either a State-supported and controlled system of police schools or with university coöperation. A number of the States have started such schools.²⁷ There is no reason why our State universities should not coöperate with the city police departments to provide for those who are thinking of entering the police service a thorough training in police methods and procedure.²⁸

Equipment. If a police force is to do its full duty by the community it must have proper equipment. This fact has not been recognized as generally as it should be, even by the police officials themselves.

From time immemorial the patrolman has *walked* his beat. An effective police system should *motorize its patrol*. That does not mean, of course, that every man should travel on wheels, but our best police systems in the United States have motorized the force sufficiently to enable men to cover their beats much more rapidly and therefore more frequently than is possible by walking. Since the automobile has come in, criminals no longer walk; therefore a patrolman without an automobile or motorcycle has little chance to catch them. Moreover, with the increasing area of residential sections and the growth in the size of cities, it is necessary that either a very much larger force be employed or that transportation be provided for the policemen.²⁹

An up-to-date *police signal system* is necessary if the force is to be used most effectively. Several of our best police systems by installing modern methods of notifying police of crime and communicating with patrolmen on the beat have shown the efficiency of scientific methods of battling the criminal. The experience of Detroit with police radio shows what can be

²⁷ National Commission on Law Observance and Enforcement, No 14, *Report on Police* (June 26, 1931), Chap IV

²⁸ In addition to the two books by Fosdick see also Fuld, *Police Administration*, and the following articles Ottolenghi, "The Scientific Police," *Journal of Criminal Law and Criminology*, March, 1913, p 876, Gault, "On the School for Police," *ibid*, January, 1917, p 644, Vollmer and Schneider, "The School for Police as Planned at Berkeley," *ibid*, March, 1917, p 877

²⁹ Fosdick, *American Police Systems* (New York, 1920), pp 306-307

done. In 1929 the Detroit Police headquarters sent out 22,598 broadcasts which resulted in 1,325 arrests in an average time of one minute and forty-two seconds. Chief Rutledge says:

"Murderers have been caught at the scene of the crime before they had a chance to dispose of their weapons. Burglars have been captured while still piling up their loot in homes. Bewildered auto thieves have gasped as the police cruiser roared alongside of them a few moments after they had stolen a car. Speeding hit-run drivers have been captured and returned to the spot where they had run down and left their hapless victim a few seconds before. Thugs have been captured while in the act of robbing their victim. Racketeers and bad-check passers have been caught. Bank stick-up men have been in handcuffs within 60 seconds of the time they fled from the bank. . . .

"Snaring criminals in a radio network woven by broadcasting to radio-equipped pursuit cars has become a matter of seconds. Seconds are precious to the law-breakers. They spell the difference between escape and capture. The wider his margin of time the better his chances to escape apprehension. By the use of radio we are catching the criminal red-handed. We are eliminating the introduction of circumstantial evidence in trials by indisputable proof of guilt. Economically, we are cutting down the cost of law enforcement by catching the crook with the goods on instead of getting him after a long chase. We have quickened and lengthened the arms of the law. We have synchronized the arrest with the depredation; instead of trailing behind in the criminal's dust, we are as near abreast of him as it is humanly possible to be."³⁰

Connecticut has a telephone-typewriter system by which immediate notice of a crime at one place can be telephoned to a large number of places throughout the State and thus in a few minutes widely scattered police stations can be informed of the crime. A similar series of stations connected by a telephone-typewriter has been suggested for the Chicago area.

These, however, are notable exceptions. Most of the police systems in this country are not adequately equipped either with cars or with signal apparatus or with radio equipment.³¹

If the police are to succeed in discovering criminals they must also be equipped with a *laboratory* or laboratories. In these all kinds of examinations can be made to assist the detectives. The microscope can be used to examine letters and documents of all kinds; chemical analyses can be made of smears found in connection with crimes, hair and blood often must be examined, and in many other ways a laboratory is of the greatest value.³²

³⁰ National Commission on Law Observance and Enforcement, No 14. *Report on Police* (June 26, 1931), pp 96, 97

³¹ *Ibid.*, Chap V, Gault, "A Progressive Police System in Berkeley, California," *Journal of Criminal Law and Criminology*, November, 1918, pp 320, 321

³² *Ibid.*, pp 320, 321.

A psychological laboratory may be used in the examination of applicants for the police force and in examining arrests who are suspected of being psychopathic and thus assist not only the police but the court when the case comes to trial.³³ Even a small police system like that of Berkeley, California, has found the psychopathic laboratory of great value. For the sake of the smaller police systems such laboratories should be provided by the State in a Bureau of Criminal Investigation and Identification.

Another piece of equipment necessary in these days for effective police work is an *identification bureau* consisting of files of cards recording various identification marks. The criminal record file is of the utmost importance for identification purposes. It is of supreme importance with reference to habitual criminals. For twelve years in England and Wales from 60 to 70 per cent of convicted persons have been recognized through this file as having had previous convictions.³⁴

Two general systems of identification have been widely accepted in Europe and in the United States,—the finger-print and the physical measurement or Bertillon method. Bertillon in 1883 was made head of the Paris Police Department and introduced anthropometrical measurements for purposes of identification. This was adopted in most of the countries of Europe, and later as the police of different cities in the United States learned about it, it was put into effect here. In 1901 the finger-print method, which had been used in China ages ago, and was first tried by English authorities in India, was adopted at Scotland Yard, London. Sir Edward Henry, then head of Scotland Yard, invented a method of classifying finger-print impressions. The Henry System is the one most widely used, being employed in most of the European countries except Italy. The other system of classifying finger-prints was invented by Vucetich and is called "the Argentine System." It is most widely used in South America. Modifications of it are used in Madrid and Copenhagen. Both of these systems are based upon the fact that while no two finger-prints have been found absolutely identical, all the millions so far taken can be classified under four or five main types with subdivisions so arranged that any finger-print can be found in a large file in a very few minutes. Finger-printing as a method of identification is fast supplanting the more complicated and less accurate Bertillon measurements. Its superiority is indicated by the fact that in England and Wales in 1911 the number of identifications made by the finger-print system was twenty

³³ *Journal of Criminal Law and Criminology*, March, 1913, p 876; May, 1916, pp 32, 79, November, 1918, pp 319, 320; August, 1920, p. 215, August, 1922, p 255. Very little has appeared on the subject in recent years.

³⁴ Fosdick, *European Police Systems* (New York, 1916), p 317

times larger than the greatest number identified in any previous year by the Bertillon system.³⁵

In many of the cities of the United States both the Bertillon and the finger-print systems are being used to some extent. Probably the time will come when the more efficient one will crowd out the other entirely. In many of our smaller cities no attempt is made to establish an identification bureau.³⁶

In addition to these two methods of identification another method known as the *Modus Operandi* system was devised by Major Atcherley in Yorkshire, England, some years ago.³⁷ This system is one which classifies crimes by method of commission. Operating through a clearing-house covering a wide territory, it is intended to help in the identification of criminals by a file describing how each crime within a given district is committed and thus so far as possible ascertaining who committed it. The system is based upon the theory that each professional criminal has a method of working. It suggests who may have been the author of a crime when nothing but the way in which it was committed is known. It is bound to be more widely employed as time goes on.

The next step needed is to have a *State Identification Bureau* so that all the police systems within a given State may register their finger-prints at a central office. Ultimately, however, if the fight against the habitual criminals is to succeed, there must be a widely used National Bureau of Identification and perhaps an international one.³⁸ For some years at the Federal Penitentiary at Leavenworth a National Bureau of Identification was maintained. This has now been moved to Washington, D. C., and is of

³⁵ Fosdick, *European Police Systems*, Chap. 9.

³⁶ Fosdick, *American Police Systems* (New York, 1920), pp. 348-353.

³⁷ Fosdick, *European Police Systems*, pp. 344-349; *American Police Systems*, p. 352; Vollmer, "The Bureau of Criminal Records," *Journal of Criminal Law and Criminology*, August, 1920, pp. 171-180; Fosdick, "The Modus Operandi System in the Detection of Criminals," *Journal of Criminal Law and Criminology*, November, 1915, pp. 560-570; Vollmer, "The California State Bureau of Criminal Identification and Investigation," *Journal of Criminal Law and Criminology*, February, 1919, pp. 479-482; Fosdick, "The Passing of the Bertillon System of Identification," *Journal of Criminal Law and Criminology*, September, 1915, pp. 363-369; Vollmer, "Revision of the Atcherley Modus Operandi System," *Journal of Criminal Law and Criminology*, August, 1919, pp. 229-274.

³⁸ Fosdick, *European Police Systems* (New York, 1916), pp. 327-335; *American Police Systems* (New York, 1920), pp. 350-353; Vollmer, "The Criminal Identification Bureau," *Journal of Criminal Law and Criminology*, November, 1918, pp. 322-325. August Vollmer, Chief of Police at Berkeley, California, after building up his own bureau of identification, was instrumental in securing legislation providing for a State Bureau in California.

growing importance. While no city police system has to send its finger-prints to this bureau, an increasing number are doing so for identification.

So valuable has the Bureau of Investigation and Identification become that an increasing number of States have set up such bureaus of their own. At the present time nearly one half of the States of this country have such bureaus. The most complete is probably that in the State of California at Sacramento. While this bureau costs \$40,000 a year, in 1927 and 1928 its cost was recovered sixfold through identification of stolen property alone. Of 98,535 finger-print records of persons arrested received by the bureau for classification and comparison, 42,667 were identified and verified as being those of habitual law offenders, thus saving additional thousands of dollars in the expense incidental to jury trials otherwise necessary. The *modus operandi* identification method is also used, 132,685 reports having been received, analyzed, and filed by the bureau according to the method used in committing the crime. In many of these cases it was able to identify the perpetrators and again save expense and hasten the incarceration of the criminal. Forgers and fraudulent check operators to the number of 3,296 were identified and verified by the hand-writing and laboratory section of that bureau. From the habitual offenders identified 970 were either escapes, parole violators, or fugitives from justice, many of them having escaped from penal institutions outside the State.³⁹ If all the States had adequate State bureaus, with intercommunication between them, and with ready communication with the National Bureau of Investigation and Identification, it would aid in the capture and incarceration of many habitual criminals who now escape.

CRIME PREVENTION

Of even greater importance than the other functions of the police which we have discussed are those of prevention. Fosdick calls the preventive efforts of the police the third great line of social defense.⁴⁰

The police may prevent crime by attacking such special problems as vice, gambling, the formation of gangs of young criminals, the use of narcotics, need in times of unemployment, and other conditions of a crime-producing nature. Police have learned that it is easier to prevent crime than to cure it, to root out conditions which produce criminals than to catch them after they are made. Commissioner Arthur Woods of New York City pointed out the importance of prevention and organized special *squads of preventive*

³⁹ National Commission on Law Observance and Enforcement, *Report on Police*, No. 14, pp. 134-135.

⁴⁰ Fosdick, *American Police Systems* (New York, 1920), p. 269.

policemen or, as he calls them, "crime prevention patrolmen." The duty of these officers was to ferret out the conditions in the city which were a menace to young boys and girls and to make endeavors to correct them. The crime prevention work of the New York Police Department with boys and girls continues to be one of its proud features. It has had a special development recently under the direction of Miss Additon.⁴¹

Another important measure recently introduced into a good many of our police departments is the *policewoman*. While occasionally it is her business to arrest people, her chief business is to prevent delinquency on the part of women and girls. While she is too new in the police department to have completely found her place in the organization, she serves a very useful purpose in connection with the prevention of crime.⁴²

Policemen and Children. The patrolman on the beat can do much to prevent delinquency in children. He becomes acquainted with the stupid, defective child, with the bright, erratic boy likely to get into trouble, he knows something of the homes from which they come and the street conditions in the midst of which they live. He knows when there is a gang of bad boys terrorizing the neighborhood in which he lives or works. He sees the first evidence of delinquency in many of these children. Vollmer has suggested that the policeman should ascertain from all the agencies and sources available the facts concerning these delinquent children and anything which will throw light upon the causes. He should ascertain from teachers and attendance officers the names of those who are giving trouble. He even suggests that these children should be mapped upon his precinct so he will know where they live and toward what kind of delinquency they are tending. He can then coöperate with the various preventive agencies in the community to take charge of these children and use such measures as he cannot himself supply to correct their evil tendencies.⁴³

Furthermore, Commissioner Woods of New York City during his term

⁴¹ Spring 3100, "house organ" of the New York Police Department, July, 1933, p. 4.

⁴² Fosdick, *American Police Systems* (New York, 1920), pp. 376-377; Hamilton, *The Police Woman, Her Service and Ideals* (New York, 1924), "Women Police Service in England." *The Survey*, September 1, 1917, pp. 490-491, *Literary Digest*, March 15, 1924, p. 56; Potter, "Delinquency and Corrections," Part I, *Topeka Improvement Survey*, May, 1914, p. 21. Other articles of interest and quite easily available are the following: Van Winkle, "The Police Woman," *The Survey*, September 15, 1924, p. 629; "Rapid Recruiting of Policewomen," *The Survey*, December 13, 1913; "Policewomen in Chicago," *Literary Digest*, August 28, 1913, p. 271; Additon, "The Functions of Policewomen," *Journal of Social Hygiene*, June, 1924, p. 321. See also Owings, *Women Police* (New York, 1925), Chaps. V-X.

⁴³ Vollmer, "Pre-Delinquency," *Journal of Criminal Law and Criminology*, August, 1923, p. 279.

of office threw the influence of his department behind the development of city playgrounds in order to reduce juvenile delinquency. He made arrangements with the school-teachers to assign policemen in uniform to talk with the children in the schools. In New York in 1915, and later in other cities, the plan was devised of having Christmas parties for the children in the precinct station houses. Over 40,000 children who otherwise would not have had a Christmas party were entertained in the station houses of New York City in this fashion during the Christmas season of 1916. The consequence was a revolution in the attitude of the children toward the policemen. Under Commissioner Woods "welfare officers," as they were called, were appointed by him, one assigned to each precinct, whose business it was to look after the welfare of boys and girls who seemed to be going wrong. In 1918 in Chicago the police investigated 19,019 cases of delinquency and complaints concerning children. This work was done by thirty-nine patrolmen assigned to juvenile work at various precinct station houses. Of these complaints 85 per cent were adjusted out of court, while delinquency petitions had to be filed only in the remaining 15 per cent. Since 1882 a juvenile delinquency division has been organized in the police department of Detroit.

In order that the policeman may do this type of work successfully he must be trained in social service. He cannot shut himself off from the other welfare agencies of the community; he must know what they are doing, why they are doing it, and how to cooperate with them.

In some cities juvenile police have been organized among the children.⁴⁴

Cooperation of Citizens with the Police. Both for ordinary work and for police protection it is necessary that the citizens of the community cooperate with the police in the conflict with crime. Unless that is done the police cannot handle the problem by themselves. As Fosdick has said, "Whatever form of organization this new method takes, its basic idea gives shape to the police work of the future: not a conventional system of patrol or a systematized procedure for making arrests—valuable as these activities may be—but an unceasing fight in coöperation with all the active forces of society, to keep criminals from committing crime and people from becoming criminals."⁴⁵

State Police. What has thus far been said pertains chiefly to well-organized police departments in large cities. In these days of the rapid traveling automobile and the consequent ubiquity of criminals some States have felt it necessary to supplement the services of the rural constable by a State police.

⁴⁴ Fosdick, *American Police Systems* (New York, 1920), pp. 369-377.

⁴⁵ *Ib: d*, p. 378, Cahalane, "Citizens' Cooperation with the Police Department," *Journal of Criminal Law and Criminology*, May, 1919, p. 100 ff.

A legislative committee in New York State studied the efficiency of the rural constable in that State and came to the conclusion that they were almost useless to combat the crime which has appeared in rural districts in the last few years owing to the change in method of transportation. They recommended that the State police force of that State be increased in number so that they could handle this problem.⁴⁶

The first rural police on this continent was the Royal Northwest Mounted Police of Canada, established in the year 1872 at Kingston, Canada. In the United States early anticipation of State police forces are to be found in the Connecticut State Police Department, the Massachusetts District Police, the Texas Rangers, the South Dakota State Constabulary, and the Idaho Department of Law Enforcement, a few of which were organized as early as 1865 and 1870. Pennsylvania, however, was the first State in the United States to adopt the form of a mounted police force known as the "State Constabulary," organized in 1905. It grew up out of the difficulties arising in the widely scattered mining communities of Pennsylvania which could not be handled by the local constable and sheriff. When reorganized in 1913 it was a force of 228 officers and men divided into four troops, each having a captain, lieutenant, five sergeants, and sixty-eight privates. They were given the powers of policemen of cities of the first class throughout the State and *ex officio* were made game, fish, and forest wardens. The New York State police was organized in 1917, then followed Michigan, West Virginia, Colorado, Massachusetts, New Jersey, Arizona, New Mexico, Idaho, Nebraska, South Dakota, and Nevada.⁴⁷ State highway police are maintained also by Maryland, Delaware, Maine, Washington, and Illinois. In some of these cases these highway police have practically the powers of the State police. The States, however, which have a police force which really patrols the rural areas are Pennsylvania, New York, New Jersey, Michigan, Massachusetts, Connecticut, Rhode Island, and West Virginia.⁴⁸

⁴⁶ Smith, "Rural Justice in New York State," *Journal of Criminal Law and Criminology*, August, 1924, p. 384 ff.

⁴⁷ Chandler, *The Policeman's Art* (New York, 1922); Fuld, *Police Administration* (New York, 1909), pp. 416-425, Mayo, *Justice to All* (Boston, 1920), Mayo, *Mounted Justice* (Boston, 1922), Miller, "The State Police," *Proceedings, Minnesota Academy of Social Sciences*, 1910, III, 96-126. An excellent bibliography on this subject is to be found in the article by Corcoran, "State Police in the United States A Bibliography," *Journal of Criminal Law and Criminology*, February, 1924, p. 554. See also article by Ray, "Metropolitan and State Police," *Journal of Criminal Law and Criminology*, November, 1910, p. 351, *ibid.*, May, 1922, pp. 139-140, and Smith, *The State Police* (New York, 1925), Chaps. I-VIII.

⁴⁸ National Commission on Law Observance and Enforcement, *op. cit.*, p. 125.

These State police systems have been found of great value for the protection of rural communities, but because of interference in labor troubles they have been subjected to a great deal of opposition by the labor-unions. Doubtless they are subject to the same influences as the city police systems. The cure for the evils of both is not abolition but further development and better training.

Does a Progressive Police System Pay? It may be asked whether a so-called progressive police system is worth while. What evidence is there that these new-fangled police systems get any better results than those organized under the old methods? Are they any cheaper, or, like most new-fangled things, do they cost more money?

Unfortunately we have too little statistical information as to the comparative results of the two systems. Certain facts suggest that these new methods are not mere fads but do produce better results.

The Berkeley police system was one of the earliest progressive systems in the United States. The police patrol there is mounted on automobiles for patrol work; it has an ingenious signal system; a psychopathic clinic has been established in connection with it; it has one of the most complete identification files in the country. Yet Chief Vollmer was able, while the population of the city was being trebled, to reduce the police force from thirty-two to twenty-eight while the number of complaints of serious offenses was reduced about one half. This progress was made in spite of the fact that Berkeley is adjacent to two large cities, Oakland, with a population at the time of approximately a quarter of a million, and San Francisco with more than half a million inhabitants just across the Bay. With an ineffective police system Berkeley would probably have been overrun with criminals from the surrounding districts. As it was, even tramps shunned the city.⁴⁹ In addition consider the increased efficiency of detection noted in connection with the State Bureau of Investigation and Identification in California.

This survey has indicated some of the evils in connection with American police systems and the important place which a police system may occupy in the cure and prevention of crime. Bad as some of them still are, on the whole they show progress. Compared, however, with the efficiency of some of the European police departments the police systems of our American cities suffer.

If, then, Americans are finally to win in their tremendous struggle to repress professional criminals, to restore to decent citizenship the youth who

⁴⁹ Gault, "A Progressive Police System in Berkeley, California," *Journal of Criminal Law and Criminology*, November, 1918, pp. 319-322.

has made a mistake and is trying to "beat back" to respectability after release from prison, and to prevent crime, they must give close and sustained attention to the police.⁵⁰

QUESTIONS AND EXERCISES

- 1 Explain the origin of the name *cop* given to police in the United States
2. What is the historical basis for the fact that the sheriff in the United States sells property after a mortgage has been foreclosed and judgment given?
- 3 Explain why the term *marshal* is given to both the commander of armies and a petty police official in American communities
4. Give six reasons for the inefficiency of the police in the United States as compared with those in Germany; in England
5. Explain the difference between the Bertillon, the finger-print, and the *modus operandi* systems of identification
6. State the arguments for and against making the ordinary policeman a parole officer for released convicts
7. What are the objections to making policemen probation officers?
- 8 Map out a program by which better understanding between the populace and the police may be accomplished
- 9 What constitutes the essential equipment of a good police department?
10. Discuss the necessity of careful selection and adequate training of policemen.

⁵⁰ Fosdick, *American Police Systems* (New York, 1920), Chap. 2.

CHAPTER XXXI

THE COURTS

THE origin of the court is lost in the mist of antiquity. The earliest codes of laws known to us present the picture of organized efforts to adjudicate troubles between members of the community. In the Code of Hammurabi, dating from the twenty-fourth century B. C., we find the judge, witnesses, and the elements of judicial procedure.¹ In the earliest codes of the Bible there are judges, methods of procedure, and judicial practices which show a long previous history.

THE IMPORTANCE OF THE COURT

Whether in ancient civilizations or in communities of to-day, courts of justice play a very important part. When men attempt to live together they inevitably find it necessary to adjust their difficulties through the intervention of some third party who will be removed from the feelings which trouble always engenders.

Private vengeance is too costly to survive very long. Furthermore the organized dignity and majesty of the community, it was soon discovered, whether it originated through the exercise of royal power, through the priesthood or through the sanctity of the temple, brought to the help of the injured person a force which neither he nor his kindred unaided could exercise. To physical force was added the sanction of recognized authority whether it were that of chief, of religion, or of conqueror. The heat of partizan passion was mollified by the deliberation and judgment of a disinterested party.

Always the important functions of the court have been (1) the redress of wrongs, (2) the conviction of the guilty, (3) the protection of the innocent, (4) the harmony of society. Members of a community are entitled to the protection of all forces in that community for the safety of their persons and the security of their property. Only so can ordered society continue to exist. When the courts fail to furnish this protection, the primary reason for their existence is gone.

In order to protect the innocent it has been found necessary to take

¹ Hastings, *Dictionary of the Bible*, Extra Volume, p. 594

measures against those who infringe upon the rights of others. Whatever our theory of penology, those guilty of what we call "crime" must be given a course of treatment, whether we call it "punishment" or not. On the creation of agencies to satisfy these sentiments of social justice depends the perpetuity of civilized institutions. So widespread is this conviction of the importance of the courts that even to-day when criticism is being heaped upon them few have ventured to suggest that they be abolished.

CRITICISMS OF THE CRIMINAL COURT

We are here concerned with the criminal, not the civil, court. What are the criticisms leveled at it and what is their value?

The charges against the court reduce to (1) undue influence, which allows the guilty to escape; (2) needless delays and other obstructions of justice due to the intricacy of our criminal procedure; (3) "the sporting theory" of judicial procedure, (4) lack of organization in our court system.

Improper Influence upon the Courts. While not all the cases which are "dismissed for lack of evidence," or "nolle prossed" or "no-papered" or discharged even after trial are so disposed of owing to political or other influences, numerous instances can be found in which prosecuting attorneys have on one pretext or another dismissed indictments against politicians or their friends, or judges and juries have been "fixed" so that the offender has been discharged. In 1920 as part of the investigation of criminal justice in Cleveland, Ohio, a study was made of the disposition of 4,499 felony cases begun in 1919. Over an eighth of these cases were disposed of by the police. About a twelfth of them were "no-papered" or "nolled" by the Municipal Court. Over 14 per cent were discharged or dismissed, or the charges were reduced to misdemeanors, while only 64.5 per cent were bound over for trial. Of the 2,539 cases disposed of in the Common Pleas Court 1,324 or 52 per cent were handled before the defendant had to plead. Of this number over a fifth (21.1 per cent) were "nolled," 2.2 per cent were not brought to trial, 1.3 per cent provided bail, and 1.2 per cent were dismissed. Over a fifth were declared not guilty and only 14 per cent of this entire number were found guilty of either felony or misdemeanor. That some of those who escaped the hand of the law did so because of influence is indicated by the writers of the report in the following words: "A study of the practical working of criminal justice should begin with some consideration of the powerful dynamic agency released through the arrest of a man upon a serious charge. The instinct of self-preservation sometimes leads a felon to commit murder in resisting arrest, and once in custody, his whole being is concentrated upon the single idea of getting out. Parents and relatives, who had apparently

given him up as a lost soul, rally loyally to rescue him from the penitentiary, often pledging their last cent for the purpose. Few felons are so disreputable that there is no one to fight for their liberty. The friends who do not come forward willingly are forced into line by every human incentive. It is often surprising how far and into what regions this active agency can penetrate. 'Beginning in the slums, among the recidivists,' observed the oldest judge on the Cleveland bench, 'waves of influence are set up that reach higher and higher until they envelop respectability. Men with spotless reputations, whose motives cannot be doubted, will urge a judge to parole a professional criminal.'² The investigators studied the record to find how the criminal lawyers found the weak spots in the judicial system. They say, "For the purposes of these tables, criminal lawyers with political affiliations were chosen. A list of all lawyers having more than 10 cases each begun in 1919 was sent to a Cleveland lawyer thoroughly familiar with the local bar. This lawyer, without knowing the figures for any names in the list, marked the attorneys with political leanings and his judgment was accepted. The figures are not as significant as a selected list would show because the names chosen for political affiliations include several high-minded men who are not primarily criminal lawyers at all. The comparison does not necessarily throw discredit upon the lawyers selected: it does reveal a system which lends itself to manipulation."³ This study gave enough instances of the working of political influence upon the machinery of justice in Cleveland to show that this indictment against the court is not without basis.

Perhaps even more insidious is the pernicious influence of parties and groups upon the judiciary where judges are elected by popular vote. The writers of the report on *Criminal Justice in Cleveland* assert that the judges of Cleveland were not above appealing to race and religious feeling, having their eyes upon the labor organizations and other influential groups in the city. In a large cosmopolitan city like Cleveland judges elected by popular vote find it difficult to forget the coming election when a case comes before them which involves religious, political, or group interest.⁴

Unnecessary Delays and Obstructions in Judicial Accusation. Court methods and forms rooted deep in the past are responsible for many unnecessary delays and miscarriages of justice. Here, precedents and the

² *Criminal Justice in Cleveland* (Cleveland, O., 1922), p. 233

³ *Ibid.*, p. 244. National Commission on Law Observance and Enforcement, No. 4, *Report on Prosecution*, pp. 19-22, 186-221. The statistical material in the last page reference summarizes the findings of numerous surveys, hence no detailed reference to them. See also Moley, *Politics and Criminal Prosecution* (New York, 1929), Chap. IV

⁴ *Criminal Justice in Cleveland* (Cleveland, O., 1922), pp. 263-265

prestige of the time-hallowed resist attempts to make the procedure of criminal courts rational and effective.

Early in the history of judicial procedure the grand jury was invented as a safeguard against tyranny. No man could be tried unless an indictment strictly specifying the crime with which he was charged was presented to the court in order to provide the defense with a knowledge of the details of the crime of which he was accused. In the course of centuries the terms of (1) *the indictment* have become so encrusted with legal verbiage that often it is impossible so to state the indictment that on appeal the verdict will not be reversed. Says Justice Barnes, "The nice accuracy of common law indictments partly grew out of the necessity of safeguarding the liberty of the individual in a period when it was endangered by the exercise of tyrannical power, and its requirements have induced resort to technicalities along the whole line of procedure until our criminal practice has become encrusted with precedents that now present obstacles to prosecution rather than protection to the accused. Refuge in mere technicality would be largely abandoned under simpler forms of pleading and a procedure adapted to the practical ends for which it primarily exists. No sound reason can be advanced for adherence to an antiquated system that has too long served to convert a process designed for ascertaining the fact of guilt or innocence into a game of wit and subtle learning. In its maze of forms the ultimate object is frequently lost sight of. When forms are not essential to conserve rights and to secure a full and fair hearing, they render no service to the cause of either liberty or justice."⁶ Consider the following copy of an indictment used in a Middle Western State some years ago:

"The state of —, W County — ss: In the court of common pleas, W County, —, of the term of October, in the year of our Lord one thousand nine hundred and —. The jurors of the grand jury of the County of W and state of —, then and there duly impaneled, sworn, and charged to inquire of and present all offenses whatever committed within the limits of said county, on their said oaths, in the name and by the authority of the state of —, do find and present that J F G, late of said county, on the sixth day of August, in the year of our Lord one thousand nine hundred and —, at the County of W aforesaid, in and upon one P S, alias F M, then and there being, did unlawfully, purposely and of deliberate and premeditated malice make an assault, in a menacing manner, with intent, him, the said F M, unlawfully, purposely, and of deliberate and premeditated malice, to kill and murder, and that the said J F G, a certain pistol then and there charged with gunpowder and leaden bullets, which

⁶ Barnes, "Causes of Delay in Criminal Cases," *Journal of Criminal Law and Criminology*, September, 1916, pp. 332-333.

said pistol he, the said J. F. G., then and there in his right hand had and held, there and then, unlawfully, purposely, and of deliberate and premeditated malice, did discharge and shoot off to, against and upon the said F. M., with the intent aforesaid, and that the said J. F. G., with the leaden bullets aforesaid, out of the pistol aforesaid, by the force of the gunpowder aforesaid, by the said J. F. G., then and there discharged and shot off as aforesaid, him, the said F. M., in and upon the upper right side of the back of him, the said F. M., then and there, unlawfully, purposely, and of deliberate and premeditated malice did strike, penetrate and wound, with the intent aforesaid, so as aforesaid discharged, and shot out of the pistol aforesaid, by the said J. F. G., in and upon the upper right side of the back of him, the said F. M., one mortal wound of the depth of four inches, and of the breadth of half an inch, of which mortal wound he, the said F. M., then and there died, and so the jurors aforesaid, upon their oaths and affirmations aforesaid, do say that the said J. F. G., him, the said F. M., in the manner and by the means aforesaid, unlawfully, purposely, and of deliberate and premeditated malice, did kill and murder contrary to the statutes in such cases made and provided, and against the peace and dignity of the state of ____."⁷

It will be observed that in this indictment the names of the defendant and his victim are each repeated nine times, the phrase "in and upon" four times, the phrase "then and there" five times, the phrase "unlawfully, purposely, and of premeditated malice" five times and the word "said" and "aforesaid" twenty-five times. Compare now the following form of indictment which Dean Lawson says would have been used in England:

"County of ____ The jurors of our Lord the King upon their oath present that J. F. G., on the sixth day of August, 1908, feloniously, willfully and of his malice aforesought, did kill and murder one F. M., against the peace of our Lord the King, his Crown and dignity."⁸

What are the results on the progress of a trial of this complicated wording of the indictment, every statement of which must be proved in the trial if the decision, in case it goes against the defendant, is not to be reversed in the court of appeal? An instance from Ohio answers this question:

"The defendant in this case had been sentenced to the penitentiary for a term of fifteen years, and the judgment of the trial court had been affirmed by the Circuit Court. The indictment charged the defendant with the murder of one Percy Stuckey, alias Frank McCormick. The Supreme Court, upon a writ of error, reversed the judgments of the trial court and of the Circuit Court and discharged the prisoner on the ground that the prosecution failed to show that

⁷ *Journal of Criminal Law and Criminology*, March, 1911, pp. 858-859.

⁸ *Journal of Criminal Law and Criminology*, March, 1911, p. 859.

the person killed was in fact Percy Stuckey, although the evidence showed that the defendant had killed some person known either by one name or the other. The omission to show that the real name of the victim was Stuckey, was, we are told, a mere oversight on the part of the prosecuting attorney, whose attention was not called to the fact during the trial. There is a provision in the Ohio penal code which provides that 'a variance in the Christian or surname, or both the Christian and surname, or other description, of any person described in the indictment, shall not be deemed ground for an acquittal of the defendant,' unless in the opinion of the trial court such variance goes to the merits of the case or is prejudicial to the rights of the accused. The Supreme Court of Ohio held in this case that the claim of error must be resolved in favor of the accused, that the rule of law which requires the name of the injured party, if known, to be stated, is too well settled to admit of controversy, and when stated must be proved. 'In the case now before us,' said the hairsplitting tribunal, 'not only is there a total absence of evidence that Percy Stuckey and Frank McCormick were one and the same person, but there is not in this case from beginning to end a scintilla of evidence even tending to show or that would suggest that any such person as Percy Stuckey ever had an existence.' In short, the allegation that they were one and the same person must be proved as any other essential fact. As this fact had not been denied during the course of the trial, the prosecuting attorney had not taken the trouble to produce the proof in support of an allegation the truth of which had not been drawn in question.

"The all-important and essential fact which had been established, namely, that the person discharged had murdered some man, either Stuckey or McCormick, seems to have been entirely overlooked by the court in its blind adherence to technical rules of procedure. The court admits that it was unable to find any authority in the decisions of other courts of last resort for such a judicial refinement, though it found abundant support in the 'reasoning' of the authorities cited in the briefs of counsel. It is refreshing at least to know that such a ruling finds no support in the decisions of other states. The truth is, if the court had fully appreciated the effect such a decision must have upon popular confidence in the administration of the criminal law, it would have pursued its investigations further. Exactly the same question has, as a matter of fact, been passed upon by the Supreme Court of Alabama in at least two cases (Faulkner v. State, 44 Southern Rep. 409, and Evans v. State, 62 Alabama 6), and in both it was held sufficient to prove that the person mentioned in the indictment was known by the alias stated therein. Honest lawyers may differ in regard to the necessity of proving that a person who is known by two or more different names is one and the same person, even when the fact is never denied, but there ought not to be any difference of opinion on the proposition that the prisoner in this case should not have been discharged. Why should not the case have been remanded for a new trial, or why should the state have been denied the right to amend the indictment so as to conform to the proof? The outcome of it all was that a

convicted murderer was turned loose by the Supreme Court, not upon the merits of the case, but through a process of reasoning that sacrificed the ends of justice to mere form.”⁹

The absurdity resulting from meticulous regard for antiquated procedure based upon the accuracy of the indictment is to be found in the following Texas case.

“A good example of the kind of justice it is capable of dispensing is found in the recent case of *Grantham v. State* (129 S W 839) The indictment in this case charged the accused with having committed burglary in a certain house occupied by six persons named therein, but the proof, although showing that the accused was guilty of burglarizing the particular house mentioned in the indictment, disclosed the fact that it was occupied by only five of the persons named. The court of appeals held that the variance between the allegation and the proof was fatal, and the judgment of the lower court was accordingly reversed. The court of appeals did not take the trouble, however, to point out in just what way any right of the accused had been abridged or denied through the trivial variance between the allegation and the proof and we confess to an utter inability to discover how the result could have been any different if all of the six persons named in the indictment had been occupants of the house instead of five only.

“Evidently, in the judgment of the court, it is of more importance to society that an immaterial procedural requirement should be absolutely complied with, even to the splitting of hairs, than that a justly convicted burglar should be punished. Apparently, absolute perfection in the framing of the indictment and in the conduct of the trial is necessary to a legal conviction in Texas and no errors, however trivial, will be tolerated. All the sacred forms must be strictly observed or the results of the most carefully conducted trial will be set at naught, in spite of the most incontrovertible evidence of guilt. In most states proof that a burglarized house was occupied by one person is all that is required to identify the house. In this case the identity of the house was fully established by proof that it was occupied by five of the six persons named in the indictment, but this did not satisfy the court. To sustain a conviction the proof must show that it was occupied by all of the six. In the absence of this proof the court felt bound to conclude that no such house as that described in the indictment existed; the burglary was therefore, committed in an imaginary house, and the conviction of the burglar must be set aside.”¹⁰

Many other cases of the same kind might be cited; the reports are full of them.¹¹

⁹ *Journal of Criminal Law and Criminology*, March, 1911, pp 853-854.

¹⁰ *Journal of Criminal Law and Criminology*, July, 1911, pp 179-180.

¹¹ For illustrations see *Journal of Criminal Law and Criminology*, May, 1910, pp 76-78; also *Journal of Criminal Law and Criminology*, March, 1911; pp 852, 853, 859; July, 1911, pp 174-179; November, 1913, p 506; September, 1916, p. 332.

What are the social results of these absurdities? It has been remarked, "When notorious criminals who have been convicted by juries are discharged or granted new trials by appellate courts upon hair-splitting technicalities, when the convictions of trial courts are reversed because of the misspelling or the omission of unimportant words in indictments and criminals are given their liberty, it does not require a mind legally trained to see that something is wrong with a system which permits such delays and miscarriages of justice."¹² If criminals are deterred from committing crimes by the certainty and swiftness of justice, is it any wonder that we have an enormous amount of crime in this country when such things can happen? Furthermore, is it a matter for astonishment if people lose respect for courts guilty of such absurdities?

Fortunately Massachusetts some years ago followed England in providing for a simple indictment. California, Wisconsin and a few other States have passed statutes providing that no decision shall be reversed because of a mere technical mistake in the wording of the indictment, if in the progress of the trial no error has been made which has jeopardized the defendant's right to a fair trial.¹³

In connection with the indictment should be mentioned the criticisms of (2) *the grand jury system*. Judge Gemmill of Chicago is of the opinion that "there is not the slightest doubt in the mind of the writer that one-half of the failure of our courts in suppressing crime is due to our adherence to that relic of Star Chamber days—the Grand Jury." He continues, "Why should it be necessary for judges trained in the law to sit for days and listen to evidence presented at preliminary hearings both for the prosecution and the defense and then, if probable cause is found, to hold the accused to a body of men who know no law and have no understanding of the rules of evidence? It is hard to understand why an indictment once voted cannot be amended after the adjournment of the Grand Jury. From an instrument of justice, the Grand Jury has to-day become a convenient cover to hide the responsibility of the State's Attorney and often a convenient instrument in the hands of unscrupulous persons to punish their enemies or reward their friends."¹⁴ There seems to be little reason these days why the Grand Jury system should be retained. It delays trial, its judgment is certainly not superior to that of a magistrate, and it is made necessary only by the fact that some State constitutions require an indictment by a Grand Jury. This

¹² *Journal of Criminal Law and Criminology*, March, 1911, p 852.

¹³ *Journal of Criminal Law and Criminology*, March, 1915, pp 894-895; *ibid.*, August, 1925, pp 166-168, *ibid.*, February, 1929, pp 51-55

¹⁴ *Journal of Criminal Law and Criminology*, July, 1912, p 188.

could be easily changed so that a case could come up for trial on the basis of an information or presentment by a judge.¹⁵

Delays Due to Antiquated Criminal Procedure. The delays due to a clumsy criminal procedure are almost wholly in favor of the accused and against the interest of the State. Such delays may be due to the Grand Jury system just discussed, the form of indictment made necessary by the constitution or the statutes, to delays in the selection of the jury, the presentation of unnecessary character witnesses, or to arguments over points of law in the conduct of the trial the only purpose of which is to lay a foundation for appeal on the basis of error by the lawyers for the defense, and frequent continuances based on traditional courtesy to attorneys. The following case shows the difficulty of an earnest prosecuting attorney's getting a decision on a case owing to respect for technicalities.

"A man named Pope in Alabama was convicted of murder by five different juries of his own selection, and each time the Supreme Court of that state reversed the case, except the last time. Think of the perseverance of that prosecuting attorney! The case was reversed twice because a witness was permitted to say that a certain shoe or foot could make a certain track. The jury were supposed to be sensible men and able to weigh such evidence, but that was not the way to do it, according to precedent way back in the dark ages, so, of course, the whole case must be reversed."¹⁶

Again much time is unnecessarily wasted in the choice of a jury. In some jurisdictions, but fortunately not in all, if a case is very important, days and sometimes weeks must be spent in a contest between opposing counsel in the selection of the jury. The purpose of this contest is not to get true and tried men impartial and intelligent enough to weigh the facts in the case and deliver a verdict based upon the evidence but a jury which will be favorable to the side of the respective counsel. Judge Storey cites the Diggs case in California, in which the prosecutor deliberately sought a jury in which the fathers of daughters should predominate and from which bachelors should be excluded for the reason that he believed that fathers of daughters would be more favorable to conviction. In a certain case in Chicago 9,425 men were summoned and 4,821 examined before a jury of twelve men was

¹⁵ *Journal of Criminal Law and Criminology*, May, 1917, p 4. See also *Journal of Criminal Law and Criminology*, July, 1912, p 188, July, 1913, p 170, September, 1913, pp 360, 531; May, 1917, p 34. However, Judge Lindsey of Pennsylvania argues for the retention of the Grand Jury on the basis that it is a common-sense body of men and eliminates many cases which should never reach trial. See also Moley, *op. cit.*, Chap VI, National Commission on Law Observance and Enforcement, No. 4, *Report on Prosecution*, pp 124-126.

¹⁶ *Journal of Criminal Law and Criminology*, March, 1915, pp 896, 902.

finally secured. In the Calhoun case of San Francisco ninety-one days were spent in getting a jury. Sometimes, as apparently in the McNamara case, this time was used in trying to corrupt a juror and yet the defense had the right of challenge to fall back upon if the attempt failed.¹⁷ As Judge Storey adds, "It is not the desire for justice, but the desire for victory which has written the laws under which the Bench now languishes."¹⁸ Every unnecessary delay means the possibility of important witnesses dying, leaving the jurisdiction of the court, or being intimidated.

The difference between the United States and England in the swiftness of justice is shown by comparing the Thaw and Rayner cases or the Tucker and Crippen cases. The first trial of Thaw dragged through a period of twelve weeks and finally resulted in a disagreement of the jury. The second trial, finished a year and a half after the offense was committed, resulted in a verdict of insanity, has since been several times renewed by means of *habeas corpus* proceedings, and it is a question whether we are yet through with Harry Thaw. While this case was being tried in the United States the Rayner case was called in London and was disposed of in five hours. Or take the Tucker and Crippen cases. Tucker was indicted June 9, 1904, for murdering Mabel Page at Weston, Massachusetts, on March 31, 1904. Although he was indicted on June 9, the trial did not begin until January 2, 1905. It was concluded only twenty-two days later, but the usual motion for a new trial was made accompanied by a bill of twenty-six exceptions. A year later a motion for a new trial was denied by the Supreme Court. Five days later Tucker was sentenced to be electrocuted. This was followed by a petition before one of the justices of the United States Supreme Court for a writ of error, and also a petition for pardon was filed with the Governor of the State. The writ of error was dismissed, pardon was refused, and Tucker was finally executed two years and five months after his arrest. Crippen under the English system was arrested July 21 and arraigned August 29, his trial began October 17, the jury was made up in eight minutes, the trial was concluded in four days, a verdict of guilty was returned by the

¹⁷ Storey, "Some Practical Suggestions for the Reform of Criminal Procedure," *Journal of Criminal Law and Criminology*, November, 1913, pp 506-507

¹⁸ *Ibid*, p 508 Certain judges defend this delay, especially on appeal, and try to minimize the expense of delay characteristic of the Supreme Court. Judge Dunn of Illinois, citing the cases in sixty volumes of the Illinois Reports covering the ten years from June, 1901, to June, 1911, numbering 258 criminal cases, says that somewhat more than three fifths of the cases were affirmed, while somewhat less than two fifths were reversed, *Journal of Criminal Law and Criminology*, March, 1912, p 845. For a most absurd illustration of this delay see Crowell, "The Burrell Oates Case," *Journal of Criminal Law and Criminology*, September, 1912, p 407.

jury in twenty-nine minutes, appeal was taken and was promptly disposed of, and on November 22, five weeks after the trial began, Crippen was executed. No one has ever claimed that Crippen had a less fair trial than Tucker.¹⁹

To expedite justice various suggestions have been made. In addition to reforms in the indictment and in methods of selecting jurors it has been suggested that instead of wasting time in allowing lawyers to make up their bills of exceptions on appeal a transcript of the shorthand reporter's notes certified by the judge of the court would be sufficient. It has also been suggested that to secure prompt and effective presentation of criminal appeals on the part of the State the district attorney of the county where the trial has been held, upon the request of the attorney-general, should assist the latter in the preparation and argument of any criminal case appealed. The trial prosecutor certainly knows more about the case than the attorney-general, who has not been in close contact with it, and the latter is at a serious disadvantage in the presentation of the case. Furthermore it consumes more time than he would need had he the assistance of the prosecuting attorney concerned in the trial.

Another way to expedite matters is to give the trial judge more freedom of action and expression during the trial. The late Chief Justice Taft said that the present practice reduces the power of the judge to little more than that of a moderator in a religious assembly.

It is also a question as to whether it is necessary to have a unanimous verdict on the part of the jury. Many delays now occur on account of disagreement of the jury when a retrial has to be had. In some states now it is possible to have a verdict on the three-fourths agreement in civil cases, and it has been seriously proposed that, if the jury is to be retained, even in criminal cases a five-sixths verdict would insure substantial justice, would do away with the possibility of "hanging" the jury by corruption or influence of even one jurymen, and would expedite the whole process of criminal procedure.

To-day in most of our States precious hours are used up by opposing attorneys in a criminal trial in addressing the jury. Is there any good reason aside from the precedents why the jury would not be better instructed and have a clearer view of the facts and the law if these long-winded orations to the jury were greatly reduced and the judge given power not only to construe the law for the benefit of the jury but also to set out to them the meaning of the evidence offered? It might be well also if he had power

¹⁹ *Journal of Criminal Law and Criminology*, January, 1911, pp 684-685, March, 1911, p 855, May, 1911, p 46; March, 1911, p 853

to curb the opposing attorneys when they present biased interpretations of the evidence presented.²⁰

The "Sporting Theory" of Judicial Procedure. Dean Roscoe Pound of Harvard University set forth this theory in all its naked ugliness in an address before the American Bar Association in 1906. He said that the "sporting theory of justice," the instinct of giving the game fair play in a court, is so firmly rooted in the law profession in America that most lawyers take it for granted as a fundamental legal tenet. He added:

"But so far from its being a fundamental fact of jurisprudence, it is peculiar to Anglo-American law, and it has been strongly curbed in modern English practice. With us, it is not merely in full acceptance, it has been developed and its collateral possibilities have been cultivated to the furthest extent. Hence in America we take it as a matter of course that a judge should be a mere umpire, to pass upon objections and hold counsel to the rules of the game, and that the parties should fight out their own game in their own way without judicial interference. We resent such interference as unfair, even when in the interests of justice. The idea that procedure must of necessity be wholly contentious disfigures our judicial administration at every point. It leads the most conscientious judge to feel that he is merely to decide the contest, as counsel presents it, to forget that they are officers of the court and to deal with the rules of law and procedure exactly as the professional football coach with the rules of the sport. It leads to exertion to 'get error into the record,' rather than to dispose of the controversy finally and upon its merits. It turns witnesses, and especially expert witnesses, into partisans pure and simple. It leads to sensational cross-examinations 'to affect credit,' which have made the witness stand 'the slaughter house of reputations.' It prevents the trial court from restraining the bullying of witnesses, and creates a general dislike, if not fear, of the witness-function, which impairs the administration of justice. It grants new trials just to give the parties a chance to play another inning in the game of justice. It creates vested rights in errors of procedure, of the benefit whereof parties are not to be deprived. The inquiry is not, what do substantive law and justice require? Instead, the inquiry is, have the rules of the game been carried out strictly? If any material infraction is discovered just as the football rules put back the offending team five or ten or fifteen yards, as the case may be, our sporting theory of justice awards new trials, or reverses judgments, or sustains demurrs in the interest of regular play. The effect of our exaggerated contentious procedure is not only to irritate parties, witnesses and jurors, in particular cases, but to give to the whole community a false notion of the purpose and end of law. Hence comes, in large

²⁰ *Journal of Criminal Law and Criminology*, January, 1911, p. 713 ff., March, 1912, p. 847; July, 1912, p. 180, September, 1916, pp. 331-332, February, 1922, p. 507 ff., March-April, 1933, pp. 1043-1044. *Annals, Am Acad Pol and Soc Sci*, May, 1933, pp. 77-88. National Commission on Law Observance and Enforcement, *Report on Criminal Procedure*, No. 8 (June 9, 1931), pp. 38-42.

measure, the modern American race to beat the law. If the law is a mere game, neither the players who take part in it nor the public who witness it can be expected to yield to its spirit when their interests are served by evading it."²¹

This sporting theory of court procedure, a survival of the practice of settling differences by personal combat, accounts for many of the technicalities which now obstruct and sometimes pervert justice, often prevents a speedy discharge of the innocent, and enables the guilty to escape their just deserts. It is partly responsible for the absurdities of the present rules of evidence. For example, the accused person is not compelled to testify concerning the crime of which he is accused. This principle holds in spite of the fact that we allow him to confess his crime and plead guilty. Certainly he is the best witness as to whether he committed the crime or not. It is a question whether the substantial requirements of justice are served by this rule, which is partly rooted in the sporting theory of justice and is partly a survival from the time when the accused was not permitted to testify in his own behalf but might be subjected to torture and forced to confess. Certainly if the burden of proof is on the State, it might be allowed to put the accused on the stand and examine him to find out what he has to say about the circumstances connected with the crime.²²

In this connection the limitation upon the function of judges should be noticed. It is the "sporting theory" of justice which has made the judge simply an umpire, instead of an agent of the State whose function it is to ascertain the facts.²³

Again it has made of the justices of the courts of appeal simply arbiters to sit in judgment upon the fairness with which the game was played according to the rules in the trial court. Some of the States are getting away from this "sporting theory" at least in the courts of appeal and have given them the authority to consider not only whether the game was played according to the rules, but whether on the basis of the facts brought out at the trial substantial justice was done.²⁴

In an attempt to correct the situation another suggestion has been made which has been adopted in a few of our courts. Instead of allowing the accused to hire his own lawyer to defend him the State provides the

²¹ *Proceedings, American Bar Association, 1906*, Part I, p. 395 ff., quoted by Lawson, *Journal of Criminal Law and Criminology*, May, 1910, p. 80.

²² *Journal of Criminal Law and Criminology*, January, 1911, p. 712; July, 1912, p. 187, November, 1913, p. 501; September, 1916, p. 336, May, 1924, p. 5

²³ *Journal of Criminal Law and Criminology*, November, 1913, p. 507, September, 1916, p. 337

²⁴ *Journal of Criminal Law and Criminology*, May, 1910, p. 55

lawyer for the defense as it does the lawyer for the prosecution. Thus has arisen the office of *public defender*. This reform has grown out of the belief that, if both prosecution and defense are paid for by the State, both will be equally interested in seeing that justice is done. Poor men accused of crime, unable to hire good lawyers, now defended often by young or incompetent lawyers appointed for them by the State, will be represented by State counsel. It lessens the legal contest now to be found in criminal trials. It leads to the settlement of many more cases out of court. It saves expense both to the accused and to the State. It prevents the perversion of justice in the cases of many habitual criminals. It makes the courts more nearly what they should be, instruments for the settlement of difficulties and the doing of social justice.

Actual experience with public defenders substantiates these statements. The following table comparing the cases defended by private and public defenders in Los Angeles County, California, during the year 1914 shows the advantages of doing away with private defense in criminal cases.²⁵

COMPARISON OF RESULTS OF CASES DEFENDED BY PRIVATE AND PUBLIC DEFENDERS

	<i>Assigned attorneys in 1913 serving without pay</i>	<i>Attorneys in private practice paid by defendants in 1914</i>	<i>Public defenders in 1914</i>
Number of cases	115	514	260
Pleas of guilty . . .	71	250	183
Per cent of cases in which pleas of guilty were entered . . .	61 7%	48 6%	70%
Number of cases in which pro- bation was granted	31	154	87
Per cent of cases in which pro- bation was granted . . .	27 8%	30%	33 4%
Number of trials . . .	30	147	58
Per cent of cases that went to trial	26%	28 6%	22 3%
Verdicts of not guilty or dis- agreements	6	54	20
Per cent of trials in which ver- dict of not guilty was rendered or jury disagreed . . .	20%	36 7%	34 4%

²⁵ *Journal of Criminal Law and Criminology*, July, 1916, p. 230.

This table shows that a much larger percentage of the defendants represented by the public defender plead guilty than of those represented by assigned attorneys or attorneys in private practice. It also shows that a smaller percentage of the defendants represented by the public defender were acquitted, and a larger number placed on probation than under the other system. Furthermore fewer cases went to trial and more were settled out of court than under the system of private defense.²⁶

As a mandatory system it has been objected to as an unwarranted infringement of the rights of the accused. It is also urged that we should get poorer defense lawyers under this system than under the present one. Again opponents argue that public defense would do away entirely with our well-established contradictory procedure. The first argument has some merit, the second less, and the last none in the light of the results of such procedure.

The Organization of Courts. Not only from the laity but from the bar itself has come a chorus of complaints against the judicial chaos in our large centers. The courts have grown up in a haphazard way in response to needs which have appeared from time to time. We have police courts, magistrate courts, courts of common pleas, municipal courts, county courts, courts of domestic relations, juvenile courts, various courts of appeal, and the Supreme Court. A movement has begun to bring order out of this chaos by the *organisation in the larger centers* at least of a unified court system. Members of the bench and bar in various parts of the United States have furnished the leadership in this reform. The movement began with the unification of the criminal court system in Chicago in 1904, when an act of the legislature created the Municipal Court of Chicago and provided for its organization on an efficiency basis.²⁷ As a result, with the addition of three judges to an original force of twenty-seven, the court has handled more than twice the former number of cases. This change has not only hastened procedure, done away with delays in trial, saved jurors' time and therefore money for the county, but has so ordered the time of the judges that a maximum number of cases may be handled in a given time, has created specialized branches of the court to handle particular kinds of problems, through the adoption of informal procedure, has hastened the

²⁶ Woods, "Necessity for Public Defender Established by Statistics," *Journal of Criminal Law and Criminology*, July, 1916, pp 230-235. See also *Journal of Criminal Law and Criminology*, January, 1915, p 660, November, 1917, p. 554, May, 1923, p 5, February, 1922, pp 476-490.

²⁷ *Journal of American Judicature Society*, February, 1918, p 134 ff. However, in Chicago there are other courts which deal with criminal cases and therefore in that city the unification is not complete.

course of trials, and has got many cases settled out of court through arbitration. Even with this progress, however, much still remains to be done to make the criminal courts of Chicago function easily, swiftly, and inexpensively.²⁸

A further step was taken in Detroit in 1920 in the unification of the whole system of criminal courts, a unique step in the history of American cities. A presiding judge was chosen with full power under the new law to control the classification of work and assignment of judges. A psychopathic laboratory was established. Shysters practising around the court were cleared out. A night session was begun to reduce the need for bail, and many bail-bond sharks consequently were put out of business. The first five months fifty out of fifty-one persons charged with robbery while armed with a deadly weapon were convicted and sentenced to the minimum terms of ten or fifteen years. Before the unification only 6 per cent of the felony cases were disposed of within six weeks, while in the new court at the end of six weeks 96 per cent of the felony cases were finally ended.²⁹ In addition this organization of courts expedited the trial of cases as shown by the fact that 66 per cent of the felony cases brought into the court during the year were tried within seven days after the arraignment and that 46 per cent were disposed of on the same day they were arraigned. This not only relieved the jail of the burden of detaining these prisoners and did away with the necessity of bail bonds but also put the terror of the law into the hearts of habitual criminals and taught a salutary lesson to the shyster lawyers.³⁰ The reduction of 58 per cent in Detroit crime in comparison with the previous year was due in part at least to this change in the organization of the court.³¹ It has been estimated that during its first year the court saved the taxpayers of Detroit more than a million and a half dollars.

Encouraged by this success in the city of Detroit and in other places the leaders of the bench and bar and other members of the American Judicature Society have put on an aggressive campaign for the *unification of State courts*. This movement has also been aided by the unification of the Federal courts under the leadership of the late Chief Justice Taft. It is impossible to go into detail with reference to the unification of the State courts,

²⁸ *Journal of American Judicature Society*, I, 15-17, 133-151

²⁹ *Journal of the American Judicature Society*, February, 1922, p. 141. For the history of the founding of this court and the progress made with details as to results see *ibid.*, August, 1920, p. 38 ff., April, 1921, p. 189 ff.; February, 1921, p. 133 ff., June, 1920, p. 14.

³⁰ *Ibid.*, June, 1922, p. 185 ff.

³¹ *Ibid.*, April, 1922, p. 165 ff.

GENERAL COURT OF JUDICATURE

JUDICIAL FUNCTION

Court of Appeal

SUPREME COURT DIVISION
Chief Justice and six judges

ADDITIONAL BRANCHES
of three judges each

ADMINISTRATIVE FUNCTION
(In aid of Judicial Function)

CHIEF JUSTICE

PRESIDING JUSTICE

of the Supreme Court division and branches
of Court of Appeal

PRESIDING JUSTICES
OF THE DIVISIONS OF
the Superior Court

PRESIDING JUSTICE
of County Courts

COUNTY JUDGES

RULE-MAKING FUNCTION
(In aid of Judicial Function)

JUDICIAL COUNCIL

Composed of

CHIEF JUSTICE

ONE MEMBER of Court of Appeal

PRESIDING JUSTICES of Superior
Court

PRESIDING JUSTICE of County Court

SUPERIOR COURT
(Five territorial divisions)

FIRST DIVISION
Presiding Justice
and . . .
. . . masters

SECOND DIVISION
Presiding Justice
and . . . judges
. . . masters

THIRD DIVISION
Presiding Justice
and . . . judges
. . . masters

FOURTH DIVISION
Presiding Justice
and . . . judges
. . . masters

FIFTH DIVISION
Presiding Justice
and . . . judges
. . . masters

COUNTY COURT

A Presiding Justice; one branch and one County Judge for each County, in certain more populous
Counties one or more Associate County Judges

but the accompanying diagram will make clear what is intended. The advocates of this reorganization relying upon the formation of judicial councils among the judges of some of the States believe that the results of unification of the courts will produce results no less noteworthy than have appeared in some of our large cities under a unified system.³²

The American Bar Association in 1909 advocated:

"The whole judicial power of each state (at least for civil causes) should be vested in one great court, of which all tribunals should be branches, departments or divisions. The business, as well as the judicial administration of this court, should be thoroughly organized, so as to prevent not merely waste of judicial power, but all needless clerical work, duplication of papers and records, and the like, thus obviating expense to litigants and cost to the public"³³

The whole movement for the unification of criminal courts in this country doubtless had its instigation from England. The first steps to this end in England were taken in 1873 and 1875 when the Lord Chancellor was made the administrative head of the entire judicial system.

Cheering progress has been made in this country toward unification of courts. In addition to the organization of the criminal courts, and sometimes all the courts, in some of our large cities, Wisconsin in 1913 enacted a law providing a Board of Circuit Judges to act as judicial council for the more efficient handling of circuit court business in that state. In 1923 Ohio and Oregon created judicial councils to provide coordination of various State courts and oversee the administration of justice. In 1922 Congress provided for the establishment of a Federal judicial council with the chief justice at its head. The movement in some of the other States is making progress.

Although the movement for the unification of the courts is slowly making progress, it is constantly becoming clearer that the unification concerns not only the courts but the consolidation of the whole machinery of justice—the police, the prosecution, and the courts. The appointment rather than the election of judges is being discussed. The closer coordination of the work of the prosecutor and of the police in the interest of greater efficiency is urged. State supervision of the whole administration of criminal justice is being urged by various bodies concerned with the problem of crime.³⁴

³² From *Journal of the American Judicature Society*, December, 1917, p 100. See also National Commission on Law Observance and Enforcement, *op cit*, pp 158-161.

³³ *Journal of the American Judicature Society*, June, 1917. For other articles upon unification of State courts see *ibid*, December, 1921, p 105 ff, December, 1922, p 101, October, 1934, pp 79-88.

³⁴ *Ibid*, October, 1934, p 84 ff. See also Pound, *Criminal Justice in America* (New York, 1930), pp 188-194, National Commission on Law Observance and Enforcement, No. 4 (April 22, 1931), *Report on Prosecution*, pp 158-160.

PROGRESS IN THE SOCIALIZATION OF THE COURTS

Briefly summarized the steps necessary to socialize the criminal courts, that is, to bring them up to their utmost efficiency in serving the social needs of the community in the suppression and prevention of crime, are as follows: (1) Provide for simplified pleadings on information. (2) Abolish the Grand Jury and substitute preliminary hearing by a judge. (3) Simplify the choosing of a jury with diminution in the privilege of challenge. (4) Permit verdict on a five-sixths majority of the jury. (5) Allow the judge to take more part in bringing out evidence in the trial, permitting him to comment on the evidence as well as upon the points of law in his charge to the jury. (6) Abolish the antiquated legal presumption of innocence which in the minds of the laymen of the jury has very little weight even at present. (7) Substitute public for private defense, at least in trials where indigent persons are accused. (8) Compel accused person to testify or allow jury to draw inferences from his refusal. (9) Simplify appeals by doing away with bill of exceptions, and allow appeal on transcript of evidence at the trial. (10) Allow courts rather than prosecution or defense to call experts.³⁵ (11) Limit the function of the trial court to the determination of guilt or innocence, leaving the determination of treatment to a board of experts composed of judges, doctors, psychiatrists, sociologists, and economists under an indefinite sentence law.³⁶ (12) Reorganize the court procedure by substituting rules of the court for statutory procedure. (13) In the extension of court functions to such special branches as family courts, courts of small claims, juvenile courts, preventive courts, etc., keep them within the organization mentioned before rather than have them courts of independent jurisdiction.³⁷

The chief responsibility for the changes necessary to socialize the courts rests upon the lawyers who compose the profession, who are members of the bench, and who form the majority in all our legislatures. All the laymen can do is to hold up the hands of these representatives of justice as they

³⁵ *Journal of Criminal Law and Criminology*, January, 1915, p. 650

³⁶ This idea, expressed in *Criminology and Penology* in 1926 for the first time in any textbook, has won increasing support. See Smith, *Progressive Democracy* (New York, 1928), pp. 209-215, National Commission on Law Observance and Enforcement, *op. cit.*, pp. 166-171

³⁷ Most of these points have been covered in the previous discussion under the criticisms of the courts. Others are covered by the following references: *Journal of Criminal Law and Criminology*, September, 1916, p. 332, March, 1915, p. 827, May, 1917, p. 2, May, 1920, p. 47. National Commission on Law Observance and Enforcement, No. 8, *Report on Criminal Procedure*, pp. 1-51. Others of these points have grown out of our discussion in previous chapters of the various methods of handling those who have been found guilty of crime.

endeavor to perfect the system. They must lead the way and educate the people to sustain them in legislation necessary for the further socialization of the judicial system, and to provide for the training of lawyers in the social purposes of criminal procedure, criminology and penology.

QUESTIONS AND EXERCISES

1. What are the chief criticisms against the judicial system of the present time in connection with the treatment of crime?
2. Describe the system of courts (a) in your State, and (b) in your city
3. What is meant by a unified court? by a State judicial council?
4. What is the function of a public defender? What are the arguments in favor of the Grand Jury? What are those against it?
5. What changes are necessary to socialize modern criminal judicial procedure?
6. Discuss the advantages and disadvantages of limiting the function of the court to determining the guilt or innocence of the accused and of handing the entire treatment over to a board.

CHAPTER XXXII

JUVENILE COURTS

A MOST interesting development of the courts is the juvenile court. This court has grown out of the demand for the socialization of the courts.

THE BACKGROUND OF THE JUVENILE COURT

The principles underlying some aspects of juvenile court legislation have long been known in legal history. It has grown out of an old concept found in the common law that the state owes to children a protection that it does not owe to adults. This concept was well established in the English courts of equity. From very early times children have been regarded as wards of chancery. While the chancery usually acted only when a property right was involved, in actual practice the chancellor more than a century ago exercised the right to interfere also for the personal welfare of the children. Thus Lord Eldon took away the children of the Duke of Wellesley because of his immoral conduct. Shelley was deprived of the custody of his children because he declared himself to be an atheist. In this country the same right was exercised.

Moreover, there has long been a sharp distinction between children and adults in criminal cases. The law recognized that children under seven are incapable of committing a crime. The extension of the age limit of childhood to sixteen or more years in our juvenile court legislation and the attempt to enforce through the juvenile court the duties of parents with respect to children have merely extended the application of the common-law rule, although the effect has been to build a new and radically different structure upon old foundations.

Furthermore, even the concept of a special court for juvenile offenders was not new to the common law. It was well established that certain classes were to be treated by special courts and different standards. "Benefit of clergy" is a historical illustration of special treatment for the most powerful social class. The juvenile court furnishes a refuge for the most helpless.¹ Nevertheless, the modern juvenile court is a good illustration of the tendency

¹ Flexner and Oppenheimer, *The Legal Aspect of the Juvenile Court*, Children's Bureau Publications, No 99 (Washington, 1922), pp 7, 8.

of the lawyers to develop a new process within the framework of an old, outworn theory.

The legislatures and the courts have long been struggling with this problem of giving special attention to children charged with crime. As we shall see in the chapter on probation, Massachusetts in 1878 enacted a probation law which applied to juveniles as well as to adults. Even before that in 1861 Illinois authorized the mayor of Chicago to appoint a special commissioner to try boys between the ages of six and sixteen who had been charged with petty offenses. In 1867 they were transferred to the regular judges in the court.² In some other States during the last quarter of the nineteenth century and before the juvenile court was devised, cases of incorrigibility and truancy were heard by the probate court without juries and without regard to the ordinary procedures and legal technicalities.³

ORIGIN OF THE JUVENILE COURT

There is some dispute whether the honor of originating the juvenile court belongs to Colorado or to Illinois.⁴ With the merits of these conflicting claims we are not here concerned. It is certain, however, that in Denver, Colorado, Judge Ben Lindsey under the school laws of that State in 1899 and Chicago a little later in the same year both established juvenile courts for the special hearing of delinquent children's cases. In both cases the new court grew out of a recognition of the evils attendant upon trying children's cases in the criminal court and the cumbersome methods of dealing with them in probate or other courts.⁵

Fundamental Principles of the Juvenile Court. The Children's Bureau has summarized the essential features of the juvenile court as follows:

- 1 Separate hearings for children's cases
- 2 Informal or chancery procedure, including the use of petition or summons
- 3 Regular probation service, both for investigation and for supervisory care
- 4 Detention separate from adults

² MacQueary, "The Reformation of Juvenile Offenders in Illinois," *American Journal of Sociology*, VIII, 647 (March, 1904).

³ Belden, *Courts in the United States Hearing Children's Cases*, Children's Bureau Publications, No. 65 (Washington, 1920), p. 7.

⁴ See Abbott, "History of the Juvenile Court Movement Throughout the World," in *The Child, The Clinic and The Court* (New York, 1925), pp. 267-273; Lindsey, "Colorado's Contribution to the Juvenile Court," *ibid.*, pp. 274-297.

⁵ In addition to the references cited in the previous footnotes see Belden, *op. cit.*, p. 7; Lathrop, "The Background of the Juvenile Court of Illinois," in *The Child, The Clinic and The Court*, pp. 290-297; Bowen, "The Early Days of the Juvenile Court," *ibid.*, pp. 298-300; Hurley, "Origin of the Illinois Juvenile Court Law," *ibid.*, pp. 320-330.

5. Special court and probation records, both legal and social
6. Provision for mental and physical examinations⁶

DEVELOPMENT OF THE JUVENILE COURT

It is now thirty-five years since the juvenile court originated. What has been its history in that time? It early caught the imagination of the public. Consequently we find this movement spreading very rapidly in this country and even throughout the world. All but two States (Maine and Wyoming) have provided for juvenile courts. Every city of 100,000 or more inhabitants has a court specially organized for children's work. Recently, owing to the activities of State agencies which have undertaken to promote the organization and development of juvenile courts, progress has been made in their extension to rural areas. Nevertheless, in all parts of the country many rural communities and small towns are without this court.

The latest figures picturing the situation with reference to the juvenile courts in the entire United States are those of the Federal Children's Bureau of 1918. A study of that year revealed that there were 2,034 courts having authority to hear children's cases involving delinquency or neglect. However, only 321 of these courts could be classified as specially organized for juvenile court work on the basis of all the fundamentals mentioned above. In half of the forty-eight States less than a fourth of the population was in reach of the courts equipped for children's work according to these minimum standards, and in several of the States no court with special organization was reported. Specially organized courts were found in all cities with over 100,000 population and were available to 70 per cent of the total population living in cities of from 2,500 to 100,000. In cities of from 5,000 to 25,000 such courts were available to only 29 per cent of the population, while to only 16 per cent of the people living in the rural communities were such courts available. The chart on page 566 graphically sets forth this situation.⁷ Probably 200,000 children pass through these courts every year.

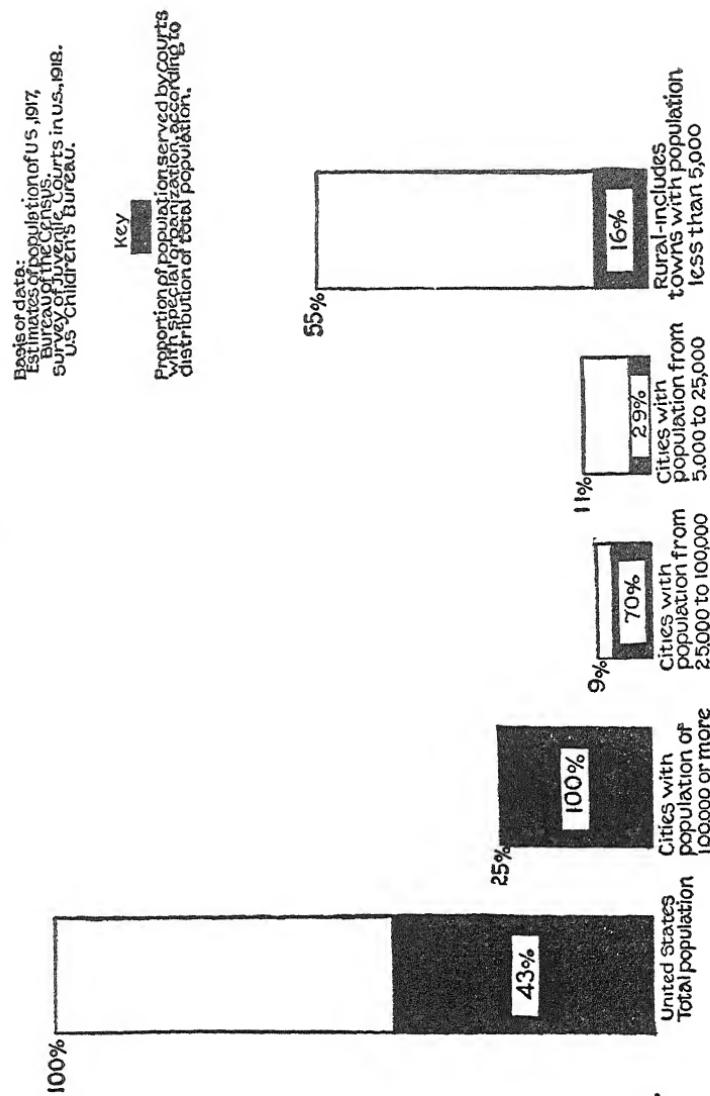
The juvenile court has been adopted in a number of foreign countries. Miss Abbott in 1925 gave a list, probably incomplete, of the nations which had adopted it.⁸ Since then the movement has spread to many other coun-

⁶ Belden, *Courts in the United States Hearing Children's Cases*, Children's Bureau Publications, No 65, p 10.

⁷ Lenroot and Lundberg, *Juvenile Courts at Work*, Children's Bureau Publications, No 141 (Washington, 1925), p 2. For juvenile court statistics see Children's Bureau Publication No 212, *Juvenile Court Statistics, 1930* (Washington, 1932).

⁸ Abbott, "History of the Juvenile Court Movement Throughout the World," in *The Child, The Clinic and The Court* (New York, 1925), p 271.

URBAN AND RURAL DISTRIBUTION OF THE POPULATION OF THE UNITED STATES AND PROPORTIONS SERVED BY COURTS WITH SPECIAL ORGANIZATION FOR CHILDREN'S CASES



tries. The forms taken vary with the court system and with already existing methods of handling delinquent children.⁹

QUALITY OF WORK DONE IN THE JUVENILE COURTS OF THE UNITED STATES

Since five sixths of the courts in the United States did not come up to the minimum standards of the Children's Bureau, i.e., courts reporting (a) separate hearings for children, (b) officially authorized probation service, and (c) the recording of social information, it is evident that most of our juvenile courts are such in name only.

The 321 which were classified by the Children's Bureau as specially organized children's courts may be characterized as to their service as follows: (1) Practically all of them had some system of detention other than the jail. (2) Many of them had other special features which might be considered essential for successful work with children. For example, twenty-two were established by special laws and operated separately from other court systems. (3) Every State in the Union but one had legislation providing for juvenile probation. Less than half of the courts having jurisdiction over children's cases had probation service. Only eight States reported a recognized worker for every court. In fifteen States only a fourth or less of the courts had official probation work. Less than half the courts reporting probation work and less than one fifth of all the courts having jurisdiction over children's cases had regular officers giving full-time paid service to probation. (4) In only six States were agencies for supervising juvenile probation work reported. (5) The majority of juvenile courts reported separate hearings for children. However, a considerable number of the smaller courts reported that the hearings were not separate. (6) While many courts reported a woman present at the hearing of girls' cases, in most instances she was a probation officer. In only six large city courts was there found a qualified woman referee for girls' cases, although in Washington, D. C., the judge of the juvenile court was a woman and in seven counties of Kansas the probate judges who heard the children's cases were women. In fourteen States the woman referee is authorized by law. (7) There was a general lack of uniformity in records, the best record-keeping being in those States which have State supervision of probation work. (8) Of 909 courts replying to the questionnaire of the Federal Bureau 671 reported provision for physical examination. In a majority where the examination was a part of the investigation only those children were examined who

⁹ Suzuki, *History of the Treatment of Juvenile Offenders and the Present Status of the Juvenile Court of Japan* (Tokyo, 1931), p 5

gave evidence of abnormal physical condition. Only 7 per cent of these 2,034 courts replying to the questionnaire reported mental examination in clinics organized for that purpose or by persons having psychiatric or psychological training. Often in these cases only those children were examined who presented special problems or were repeaters. In only thirteen of these courts were clinics maintained as a part of the court organization. These clinics were all located in cities of 100,000 or more population (9). In many small towns and rural communities, even in States which have legal provisions for juvenile courts, children were still subjected to unsocialized court procedure which the juvenile court was intended to get away from. Even of those with separate hearings in children's cases many still maintained the old procedure and imposed the old punishments.

In short, of the estimated 175,000 children's cases brought before the courts in the United States in 1918 approximately 50,000 came before courts not adapted to the handling of children's cases. Says this report, "Statistics cannot adequately reveal the injury done these children through their association with adult offenders, their trial under the old criminal processes, and the absence of equipment for the study of their needs or for proper oversight and protection."¹⁰

JUVENILE COURT STANDARDS

After thirty-five years of experience with this kind of court, certain principles and standards have appeared in the minds of those who have been studying very carefully this agency of social rehabilitation and prevention. In 1923 a committee meeting under the auspices of the Federal Children's Bureau and of the National Probation Association after long discussion and conference with people engaged in juvenile court work and those interested in the way in which such courts operate throughout the United States proposed the following standards.

The Court. Every community should have available a court equipped

¹⁰ Belden, *op. cit.*, pp. 12-19. Mack, "The Chancery Procedure in the Juvenile Court," *The Child, the Clinic and the Court* (New York, 1925), pp. 310-319. See also The White House Conference on Child Health and Protection. *The Delinquent Child* (New York, 1932), pp. 256-290, Lou, *Juvenile Courts in the United States* (Chapel Hill, N. C., 1927), Children's Bureau Publications, No. 127, *Juvenile Court Standards* (1923), No. 141, *Juvenile Courts at Work* (1925). No. 193, *The Child, the Family and the Court* (1929). Also Chart No. 17, Lyman, *Analysis and Tabular Summary of State Laws, etc.* (1930), National Probation Association, New York, *The Child and the Court* (1932), *A Standard Juvenile Court Law*, Revised Edition (1933); Breckenridge, "Re-Examination of the Work of Children's Courts," *Year Book*, National Probation Association, 1930, Hillel, *Juvenile Court Laws of the United States* (National Probation Association, New York, 1933).

to deal with children's cases, rural as well as urban. Usually the county should be the unit of jurisdiction. The juvenile court should be a court of superior jurisdiction and a court of record, but the evidence given in the juvenile court should not be lawful evidence against the child in any civil, criminal, or other cause or proceeding in any other court. The proceedings should be in chancery or equity and not criminal in their nature. The court, however, should have criminal jurisdiction in adult cases pertaining to children. The jurisdiction of the juvenile court should be broad enough to cover cases of delinquency by the custody of children who need care outside of their own homes—adoption cases, cases of mental defects and disorder, truancy, cases in which adults are concerned in contributing to delinquency or dependency, non-support or desertion of minor children, and the determination of paternity and support of children born out of wedlock. The age limit should be extended to a point not lower than eighteen years. Jurisdiction once established should continue until the age of twenty-one unless earlier the case is dismissed or passes out of the jurisdiction of the court.

The judge should be chosen because of his special qualifications for juvenile court work. His tenure of office should be long enough to warrant special preparation and the opportunity to develop interest. He should not have so many cases that it is impossible for him to give due care and consideration to each case.

Process before Hearing. The police on arresting a child should at once hand over the jurisdiction to an officer of the juvenile court. The police, however, should operate in close cooperation with the court in handling juvenile cases. They should not handle unofficially cases of juvenile delinquency after the child has been taken into custody. That should be done by the court or the probation officer. Also they should not hold the child in custody in the police station or jail. His place of detention should be determined by the juvenile court and its officials. Only occasionally should bail or appearance bond be required. The determination whether a petition should be filed or other formal action taken should be made by the judge or a probation officer designated by him after due investigation. The judge should exercise supervision over all the work of the court.

Detention. It should be the policy of the court to detain as few children as possible, and those as short a time as possible. Whenever possible those detained should be placed in private boarding homes, and detention should be limited to those for whom it is absolutely necessary. They should never be kept in jail or police stations. If a detention home is provided, it should be very carefully supervised, else demoralization of the child is sure to result. It should not be used as a disciplinary institution.

Study of the Case. At the earliest possible moment social investigation of the case should be started. In addition the court should see to it that a physical and mental study of the child himself is made and on the basis of this study an analysis made of the causes of his delinquency and the program of treatment outlined. These studies should be made by persons adequately trained for that purpose. In rural communities this can be provided either through arrangements with such agencies in urban centers near by, through traveling clinics, or through special arrangement with a State department.

Hearing. Hearing of the case should be held as soon as proper notice to those concerned can be given, if possible within forty-eight hours. There should be no publicity in a juvenile court case. None should be present except those directly concerned, and witnesses only when testifying. Parents or guardian should be present, the hearing should be informal, the child should not be treated as a criminal, although sound rules of evidence should be kept in mind, there should be a written report of the proceedings to be used by the court for the purpose of record and interpretation. Jury trials should not be permitted, and children should not be present at the hearing of neglect or dependency cases except for the time required for identification when that is necessary. In hearing cases involving adults the usual court proceedings in criminal cases is necessary to give the defendant all the safeguards that the law and Constitution offer him. In girls' cases it is desirable that they should be heard by properly qualified women referees. The judge should finally pass on the findings and recommendations and review the disposition of the cases by the referee.

Disposition of Cases. There should be sufficient variety of resources in the community so that the court may fit the treatment to the needs of the child instead of sending all of them to institutions. The latter should be used only after careful study or repeated trials have made it clear that it is impossible to adjust the child to his home life and community by other means. Fines should never be used, and restitution and restoration only as measures of discipline or to instil respect for property rights. Children placed by the courts under the care of private agencies or institutions should remain under the jurisdiction of the court, which should require reports and retain the right to visit. The administrative work of placing neglected and dependent children in family homes should be undertaken by the court only in the absence of other suitable agencies to do so.

Probation and Supervision. The probation staff of the juvenile court should be appointed by the judge from a list secured by competitive examination but subject to approval by a supervising board or commission. The pay

of the probation officer should be sufficiently large to attract good men and women, comparable with the pay of social workers in other fields. A case load of not more than fifty cases to each probation officer is the proper standard for good work. The cases of girls and of boys under the age of twelve years should be assigned to a woman officer. Boys over twelve years should be assigned to men. A probation period of from six months to a year will afford a good test of whether probation is a proper method of handling the case. All the principles of good probation work discussed in the chapter on that subject should be kept in mind in connection with juveniles. In rural communities probation work may be advantageously combined with other types of social service. The important thing is that every resource of science and the human personalities interested in children and trained for their service should be brought to bear intimately and skilfully upon these wayward children.

Supervision of the work of the probation officers should be exercised by a State commission or board or by a special officer created by law in some department of the State. This supervision should be advisory both to the probation officers and the court as to all the features of their service, but with power to compel keeping of prescribed records and making periodical reports to the State supervisory authority.¹¹

Records. Every juvenile court should have a record system providing for two kinds of files. (1) A file of the necessary legal records; (2) The social records of the case covering the investigation and physical and mental study of the child, and a record of the treatment given by the court and probation officer. Only so can a constructive plan of treatment be made for the welfare of the child.

Annually these records should be studied for the statistical information they afford in order to provide a basis for comparison with other courts and thus enable the court to learn from its work how better to perform its task.

RESULTS OF THE JUVENILE COURT

Unfortunately statistics are not adequate to enable us to say just how efficient the work of the juvenile court has been in correcting delinquent tendencies in juvenile offenders. We have no records to show how many of the children who were handled by the old criminal court went wrong and how many were saved. We have a few figures on the results of the juvenile court. In the Boston Juvenile Court from 1906 to 1916 from 34 per cent

¹¹ *Juvenile Court Standards*, Children's Bureau Publications, No 121 (Washington, 1923).

to 29 per cent were returned to the court during each of two five-year periods studied.¹²

In Massachusetts a study was made of 296 juvenile court boys on probation. Out of this number fifty-five were surrendered and committed to institutions. Of the 239 boys carried through the original probation without surrender and commitment, 60 per cent at the time of the study, nine years after they were placed on probation, had had no subsequent court record. A further study of the boys after they had been four years beyond the jurisdiction of the juvenile court showed that only 22 per cent had acquired records as adults. Thus 78 per cent of the entire group had been free from an adult criminal record. A recent study of 923 boys from the Boston Juvenile Court who had been referred to the Judge Baker Foundation for study and recommendation showed that during five years after their treatment by the court and its officers 88.2 per cent of them had fallen into crime.¹³

The work of the juvenile court has suggested that older children might be handled effectively on the basis of juvenile court procedure. Hence, in a number of large cities Boys' Courts and Morals Courts have been established to handle special classes of juvenile and older offenders, often by a somewhat modified criminal procedure.

SOME UNSOLVED PROBLEMS OF THE JUVENILE COURT

The first flush of enthusiasm for the juvenile court has passed, and an era of careful examination and criticism of its methods and results has succeeded. As serious students have watched it and its development, numerous questions have arisen which experience has not yet enabled us to answer. Of these questions the four following may be selected as the most important at the present time.

1. Should the juvenile courts deal only with the child or have jurisdiction over all persons affecting his welfare? In some States the juvenile court law does not allow the court to handle an adult who has contributed to the delinquency of a child. It cannot handle domestic relation problems in which a child's welfare is menaced. This division of authority in the courts with reference to individuals entering into the problems of a child creates some confusion, leads to delay, and prevents proper handling of the situation in the interests of the child. Therefore, it has been urged that the juvenile

¹² Harry Humphrey Baker, Publication No. 1, Judge Baker Foundation (Boston), pp. 33, 34, 105.

¹³ Glueck and Glueck, *One Thousand Juvenile Delinquents: Their Treatment by Court and Clinic* (Cambridge, Mass., 1934), p. 151.

court should become one division of a family court having jurisdiction over all persons who are concerned with the welfare of the child.¹⁴

2. Should the age jurisdiction of the juvenile court be increased? It was a great step forward when the law provided an upper age limit of sixteen for the child. To-day the majority of the States have extended juvenile court jurisdiction to eighteen years, and some of them to twenty-one. G. Stanley Hall has told us that girls do not reach their early maturity until eighteen or twenty. The changes taking place during adolescence in many cases are not complete and the personality settled until later. Is there any reason in the nature of things why, as experience with these courts provides guidance, the jurisdiction of the juvenile court should not be extended to the point where the parental attitude naturally gives way to ordinary criminal procedure? Dr. Healy ventures the opinion from long observations that the vast majority of offenders at seventeen or eighteen years of age are still in need of being understood and treated by the methods in vogue in a well-conducted juvenile court where past records, with their showing of factors in environment, personality, opportunities, etc., can be taken into account for further disposition of the case.¹⁵ The practical question, therefore, has been raised by some workers as to whether for some youths guilty of certain offenses the age limit should not be raised.¹⁶

3. Should the juvenile court have administrative charge of the social work necessary to readjustment or leave that work to other social agencies? For example, should the juvenile court be charged with the administration of aid to dependent children? Should it have charge of the probation work under good juvenile court work or should it refer the care of children to private agencies? As long ago as 1912 Professor Hotchkiss raised the question as to whether the school or the court was the best agency to organize probation service. In 1914 Professor Eliot in his book argued that the school ought to supplant the juvenile court in the administration of the personal work attempted by probation officers. On the other hand, it is asked how could anything else than a court function properly in the control and discipline of some persistently delinquent children? When adults are concerned with the delinquency, neglect, or abuse of children, certainly a court authority

¹⁴ Hoffman, "Courts of Domestic Relations," *Journal of Criminal Law and Criminology*, January, 1918, p 745 ff, Flexner, Oppenheimer, and Lenroot, *op. cit.*, pp 47, 48, 62-64

¹⁵ Quoted in Towne, "Shall the Age Jurisdiction of Juvenile Courts Be Increased?" *Journal of Criminal Law and Criminology*, February, 1920, p 504.

¹⁶ For detailed discussion of this question see Towne, *loc. cit.*, pp 493-515; *Proceedings of the Conference of Juvenile Court Standards*, Federal Children's Bureau Publications, No 97 (Washington, 1922), pp 34, 39, 40, 64, 76.

is needed. If such authority is needed, why not the juvenile court as well as any other court? Again, where parents or other adults, boards of education, agencies, and institutions dispute as to the custody or guardianship of children a judicial decision is necessary followed by enforcement of that decision. If a court, why not the juvenile court?¹⁷

4. *Should the juvenile court be abolished and schools and child welfare agencies take its place?* The affirmative of this question has been argued by Miss Additon and Miss Deardorff, but there is still the difficulty that work with children involves some authority competent to settle contested legal rights. Why not a juvenile court?

These and many other questions without doubt will be solved in the light of future experience. The juvenile court may not be the last word in the correction of young delinquents. It started out with fine ideals and great promise. With its informal procedure, its promised invocation of science and its proposed application, social diagnosis and case treatment, techniques so successfully used in other human relations, it appeared to be the most promising forward step in the socialization of the court which had yet been made. Its aim was not punishment for punishment's sake but social treatment for the correction and redemption of the wayward child. Its methods were to be not those of hoary judicial procedure but of the human touch, informed with the latest knowledge as to the nature of children and the springs of conduct, applied with all the skill which can be learned from long practice in dealing with human beings. But the studies made of its actual workings show how far short it has come of the promises of its early supporters.¹⁸ No doubt it will change its methods as better ones are demanded by the public. If proper preventive work is done, it may even disappear. Even so it will mark a stage of progress in humanity's struggle with crime and in the endeavor to throw about childhood those redeeming influences and those protective conditions which will make courts and prisons obsolete.

QUESTIONS AND EXERCISES

1. Trace in outline the history of the juvenile court
2. Trace the development of the court (a) in this country and (b) in the rest of the world.

¹⁷ Hotchkiss, "The Juvenile Court as It Is Today," *Proceedings, National Conference of Charities and Correction*, 1912, p. 450 ff., Eliot, *The Juvenile Court and the Community* (New York, 1914); Thurston, "Is the Juvenile Court Passing?" *The Survey*, October 22, 1921, p. 119.

¹⁸ See not only Belden, *op. cit.*, but also Baldwin, Oppenheimer, and Lenroot, *op. cit.*, pp. 45, 46, Murphy, "The Juvenile Court at the Bar A National Challenge," *Annals, American Academy of Political and Social Science*, September, 1929, p. 80 ff.

- 3 What are the fundamental principles of the juvenile court?
4. What proportion of the juvenile courts in the United States come up to the specification laid down by the Children's Bureau of a "specially organized" juvenile court?
- 5 Study the juvenile court in your community and evaluate it on the basis of the standards set out in this chapter.
- 6 Why is it important to have good records in the juvenile court?
- 7 Give the arguments for and against the proposal that juvenile court methods should be extended to the handling of adults
- 8 Discuss the proposal that juvenile courts should be abolished and their functions taken over by the schools.

CHAPTER XXXIII

PARDONS

ONE of the methods sometimes used to soften the severity of prison discipline but originally devised to rectify miscarriages of justice is the use of the pardoning power. Where it can be shown that mistakes have been made in trials, the laws of most States give the governor the right to commute the sentence or to pardon conditionally or absolutely. In most States a pardon restores the lost citizenship of the criminal.

ORIGIN AND DEVELOPMENT OF THE PARDONING POWER

The use of executive clemency long antedates the origin of the prison system. So far as the practice is to be found in America, it is the imitation of an English institution.

In England the system of pardons seems to have grown out of the conflict between the king and the nobles who threatened his power. It was applied to members of his own household when they committed offenses and occasionally to those convicted of offenses against the royal power. It was loosely recognized in the laws of Aethelbert, of Alfred, and of Edward the Confessor. The coming of William the Conqueror greatly strengthened the royal power and brought to England the view that the pardoning power was the exclusive prerogative of the king. The chief exception to this practice was the benefit of clergy which had been built up by the church in its system of canon law.

Parliament during the period of its growing power, from the Plantagenets to the Tudors, on various occasions attempted to curtail the use of this power by the king. Under the strong Tudors, however, the tendency was in the direction of its exclusive exercise by royal authority. This is witnessed by the passage of the act known as 27 Henry VIII, Chapter 24, which granted exclusive pardoning authority to the crown.

A number of English legal writers, among them Coke, Hobbs, Hale, Chief Justice Holt, Sir William Hawkins, Sir Michael Foster, and William Eden, attempted to work out a theory of the place of pardons in a system of penal law. Beccaria, who admitted the necessity of pardons as long as justice was exercised as in his day, urged that as punishments became more

mild, pardon was less necessary. He even argued that the exercise of clemency belongs to the legislator and not to the executor of the laws; that to have a system of pardons as an offset to unjust laws is "to nourish the flattering hope of impunity and is the cause of their considering every punishment inflicted as an act of injustice and oppression. The Prince in pardoning gives up the public security in favor of an individual and by his ill-judged benevolence proclaims a public act of immunity."¹ His sentiments, however, have been long in finding acceptance.

Blackstone defended the right of pardon as a humanitarian mitigation of the severity of his times when 160 capital crimes were on the statute book.²

The English practice of pardon was followed by the American colonies. This practice was established in the colonial charters granted by the king, who delegated to his representative the pardoning power. During the period of conflict between the royal governors and the colonists, the latter attempted to reserve this power to the general council or body representing the colonists.³

Following the independence of the American colonies the pardoning power was vested in different officials in the various States. Since the executive departments in the State governments were looked upon with some suspicion in the early days because of the action of royal governors in the colonies, the tendency was to concentrate power in the hands of the legislature. Consequently in a number of the new American States the governor could exercise the pardon only with the consent of the executive council. In others, the governor could reprieve a criminal and his final disposition had to await the meeting of the legislature. In a few States, among them New York, Delaware, Maryland, North Carolina, and South Carolina, in those early days, pardoning power was vested in the governor alone. The tendency was as time went on and the office of governor commanded greater public respect, to concentrate this function in the hands of the State executive, as shown by the fact that of the thirty-five States which have been admitted to the union since its organization in the constitutions of twenty-six this prerogative of the governor was either shared with some board or council or, as in Minnesota, Nevada, Idaho, and Utah, was put in the hands of boards of pardon. In 1922, twelve different forms of pardon administration were to be found in the United States.⁴

¹ Beccaria, *Crimes and Punishments* (New York, 1809), p. 46.

² Blackstone, *Commentaries*, Book IV, pp. 307, 398.

³ Jensen, *The Pardoning Power in the American States* (Chicago, 1922), Chap. I.

⁴ In that same year Jensen described the situation as follows I The governor alone: Arkansas, Kentucky, Virginia, Wisconsin II Governor and Senate: Rhode Island III Governor and Executive Council New Hampshire IV Advisory Board to gov-

The personnel of pardon boards varies from State to State. In a number of States the governor is a member of such board; in others, the lieutenant governor; in still others the secretary of state; and in a few, the State auditor or State comptroller. The attorney-general is made a member of such a board more frequently than any other State official. In some States the chief justice of the supreme court is a member. In one State (California) the wardens of the two State prisons are members of the board. Thus, on the board of pardons in various States is some member of the executive department, in others some member of the judicial department, and in still others are those concerned with the management of prisons. In addition, in some States there is a representative of private citizens on the board.

In some cases the board is advisory to the governor; in others it is independent. Frequently the functions of pardon and parole are combined under the same board.

THE EARLY SOCIAL FUNCTIONS OF THE PARDONING POWER

1. In early times the purpose of pardons was *to do away with miscarriages of justice*. This still remains its chief justification. However, its abuse early led to the suggestion of strict limitations.

2. Early in the history of American prisons *the hope of pardon was held out as an incentive to convicts to work well and behave themselves in prison*. In other words, the prospect of pardon was a device to make prison discipline easy. In the absence of a parole law, a very careful use of pardon did not

ernor and Executive Council Maine and Massachusetts V Governor and Advisory Pardon Board Alabama, California, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Missouri, Michigan, Mississippi, Nebraska, New York, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Texas, Washington, Wyoming VI Governor may create a temporary advisory board consisting of three members of Supreme Court, and may accept or reject its advice Vermont. VII Governor and Board of Pardons Governor may grant clemency only with consent of Board, of which he is not a member Arizona, Delaware, Montana, New Mexico, Pennsylvania. VIII Board exercises the granting of clemency. The governor is a member, and his consent is necessary to grant clemency Florida, Nevada, New Jersey, Utah IX Board exercises the granting of clemency The governor is a member but majority action governs, regardless of whether the governor is of the majority or of the minority. Idaho X Board Clemency can be granted only by unanimous action of the Board, of which the governor is a member Connecticut, Minnesota, North Dakota. XI. Governor and pardon attorney The latter acts in an advisory capacity only. Oklahoma, West Virginia XII Two pardon authorities with divided responsibility. Pardon Board, of which governor is not a member, has full authority to grant clemency in (a) all cases of capital punishment, imprisonment for life, or for a longer term than two years, (b) in cases where a fine exceeds two hundred dollars Governor has full authority to grant clemency in all cases where punishment or fine is less than that stated above South Dakota. *Ibid*, pp 15, 16.

show bad results, but too frequently used it made a joke of judges, the courts, and the law. Furthermore, since punishment was used as a means of deterrence, the frequent use of pardon destroyed the efficiency of punishment as a deterrent. Experience in Philadelphia showed that to use the pardoning power as an aid to prison discipline was a mistake. Those refused pardons came to feel that pardons were the result of political influence or "pull" of some kind. That experience and the history of pardoning power for the years since shows that the pardoning power needs to be very carefully safeguarded if it is not to defeat the very ends of justice. It should be used only when there has been a miscarriage of justice.⁵

3. Due to the overcrowding in early American prisons *it was often used as a method of making room for new convicts.* Crawford, in his first visit to the penal institutions of the United States, reported on his visit to the Ohio State Prison that: "Whenever the convicts exceeded the number of 120, the governor of the State was forced to grant pardons in order to create room in the prison for the newcomers."⁶

PRESENT-DAY PROBLEMS IN CONNECTION WITH PARDONS

A century's experience with pardons has raised a number of serious questions. Nothing is more needed at the present time than a careful study of the results of present-day penal methods. Among these problems pardon is important.

Are Pardons Necessary to Undo Injustices in the Courts? There is little question that under our present methods of judicial procedure justice is not guaranteed. It is possible to "railroad" men to prison just as it is possible for criminals to escape the hands of justice.⁷ The following instances of the use of the pardon to mitigate injustice show that there is still room for a proper use of pardons:

"It cannot be said that no consideration should be given by the executive to the family and the surroundings of the criminal. The very purpose of lodging the pardoning power in the executive is to relieve exceptional situations where it is to be presumed that the legislature passing the law might have fixed a different penalty had it been familiar with the facts. I illustrate what I mean by two cases that came before me this week—one, the wife of a criminal, came into my office with six children, the youngest five months of age and the oldest

⁵ Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Albany, N. Y., 1922), pp. 38, 39.

⁶ *Ibid.*, p. 261.

⁷ Goodrich, "The Use and Abuse of the Power to Pardon," *Journal of Criminal Law and Criminology*, XI, 339 (November, 1920).

ten years. Her husband had been sent to prison for from one to five years for stealing chickens, leaving her with the six children without any property whatever, except the household goods. Living with her was her widowed mother sixty-five years old and the sister nineteen years old, the latter a stenographer earning eighteen dollars a week and the sole breadwinner of the family, except that the wife and mother were doing washing at the house and adding to the earnings of the sister. The total income of this family of ten was less than thirty dollars a week. The mother became ill, could no longer wash and in her distress the wife appealed for clemency for the husband who has been in prison eight months. She said if her husband was not released she would not be able to keep the family together, but would be compelled to place them in an orphan's home. The former employers of the criminal had in writing offered him back his job at six dollars a day if released.

"I claim that this is a plain case for executive clemency. It is the man's first offense. Apparently he had lived a correct life up to that point when sickness in his own family, according to his statement, led him to commit the theft. Is society better off to let this woman struggle on with impossible conditions, the family to be broken up and this man at the end of three months more come out embittered against society, or is it better for society to extend clemency, give him another chance in life, restore him to his family and permit him to take care of them? The mere statement of the situation brings the answer.

"Yesterday I received a letter from which I quote. 'I am writing you concerning and pleading for my husband and family. He is in prison and as it is so hard for us to get along without him, and I have been trying to come to see you personally, but as it costs so much and I have not enough to get along on, only just what I work and get, and that is not very much. My husband was sentenced the nineteenth day of June and was taken away from us without leaving me any money. I have four children to care for, the oldest ten years and an invalid, the others eight, five and three years. I don't feel like I am able to work and keep the home together and keep my children in school. You know children must be kept in school, and I have to work ten hours a day and I walk two miles each way to my work and then come home and do my housework to keep my children in school and my family together. I am not stout, but the Lord has been merciful to me, for I have stood the work and worry so much better than I ever thought I could. Now, my husband did wrong and should never have taken the \$50 he did, but he is not paying back one penny where he is, and if you will let him out I and himself are willing to work every way and try to pay every cent of it back'"⁸

"These two cases are typical of hundreds of cases that come before the executive. Seventy-six per cent of those applying for clemency do so without intervention of lawyers, many times because they are too poor to employ them. Just so long as the law for the protection of society continues to deprive the innocent

⁸ Goodrich, *loc. cit.*, pp. 340-341.

family of its sole support, with no provision for their care, just that long will these cases appeal with great and convincing force to the conscience of the executive, unless he is indifferent to human distress."⁹

These are sad cases. The treatment given these men was the result of a questionable social policy. But was a pardon, which theoretically is intended to correct the mistakes of the machinery of justice, the thing needed? Why should not these men have been put on probation, if the facts are as stated by the governor? Or, if sent to prison, why should they not have been paroled? It may be replied that in some States certain offenders are not eligible to probation and that the law does not permit parole until after a certain part of the sentence has been served. In these cases, then, assuming that they could not have been handled by the judge at the time of conviction under suspended sentence, or by the parole officials, executive clemency was the only thing left to correct a bad situation. If that was the case, then that State would seem to be in need of radical revision of her laws governing suspended sentence, probation, and parole. There are cases, however, in which a miscarriage of justice cannot be corrected by these other methods. Then pardon may well be exercised in the interest of social justice. When we remember that 35 per cent of criminal cases are reversed on appeal and that in one State 96½ per cent of first offenders paroled by the executive observed their parole and earned their discharge, it seems that in a certain percentage of convictions there is social justification for the exercise of executive clemency.

It is the conviction of a number of the governors who have discussed this matter that not only is justice done to the individual concerned, but the public interest is served best by a wise use of the pardoning power.¹⁰

Is the Pardoning Power Subject to Abuse? The newspapers are frequently filled with stories indicating that the governor has exercised his pardoning power in an ill-advised way. Whenever there is a strong public reaction against crime there is likely to be a good deal of criticism of any governor or pardoning board which releases men from prison.

Without doubt at certain times there has been reckless release of prisoners by the pardoning authorities. In the California Constitutional Convention in 1878 and 1879, when the constitutional provisions on pardons were under discussion, a number of the members of the Convention voiced the belief that pardons had been too freely granted. The working man's party represented

⁹ *Ibid.*, p. 340

¹⁰ For illustrations of miscarriage of justice which call for the exercise of the pardoning power, see Borchard, *Convicting the Innocent* (New Haven, Conn., 1932).

in the Constitutional Convention was against the pardoning power being vested in the governor. Other members of the Convention referred to the great abuse of the pardoning power, and one member of the committee on pardons admitted that the power had often been abused in that State in the past because of the pressure put on the governor.

The same expression of belief in the misuse of the pardoning power has been registered in other constitutional conventions as well as in the press. This objection appeared in the Illinois Constitutional Convention of 1870, in the Kentucky Constitutional Convention of 1890, in the Pennsylvania Constitutional Convention of 1837. In addition to these evidences of dissatisfaction with the pardoning power, Jensen has pointed out that judicial decisions and law writers have expressed the same distrust of the control of the pardoning power of the governor.¹¹

It is probable, however, that many of the stories of abuse of the pardoning power are the result of an effort to make political capital out of a governor's mistakes. Nevertheless, such instances as the pardon of Patrick by Governor Dix show that the pardoning power is often subject to grave abuse. Patrick was tried and convicted by a jury of the premeditated murder of his benefactor, Rice. Every effort which ingenuity could suggest and money could pay for was made to have the course of justice stayed and the sentence of death delayed. The State supreme court affirmed the verdict. A governor then commuted his sentence to life imprisonment. Two later governors refused to extend further clemency, but Dix, after a secret hearing of pleaders for Patrick, issued a pardon, accompanied by a statement that after his release he hoped that Patrick would demonstrate his innocence!

Should Pardons Be the Function of the Governor or of a Pardon Board? It has been argued that the pardoning power involves too great responsibility to be exercised by any one man. Consequently the movement has grown up to put limits upon the absolute power of the governor. In most State constitutions the legislature is given the authority to prescribe rules governing the matter of pardons. In some of the States the pardon authorities are subject to rules prescribed by law, but in a larger number these rules govern only the manner of applying for clemency.

Furthermore, the offenses for which pardon may be granted are definitely limited in some States. In 1922, twenty-seven States did not permit their regular pardoning authorities to exercise clemency toward those guilty of treason and those who had been impeached. In some of these the legislature reserved such clemency to itself. As to ordinary crimes, regulations of the pardoning power are contained either in the Constitution or are provided

¹¹ Jensen, *op. cit.*, pp. 23-29

by the legislature or the pardoning authority itself is authorized to make rules. In some States the governor alone is charged with the duty of considering pardon cases. In others, he is advised by a pardon board which conducts the hearings and makes recommendations. In still others all pardons are handled by a board of which the governor is a member.

BOARDS OF PARDONS AND PAROLE

The device of a board of pardons and parole was suggested by the abuses to which we have referred. The following arguments against the pardoning power in the hands of governors have been urged:

(1) Governors are often influenced by sentiment and emotion rather than by consideration of the welfare of society. (2) Often the governor pardons because of political pressure put upon him. (3) The governor is allowed too much discretion in the exercise of this power. (4) It is a wasteful use of the governor's time, which should be devoted to more important duties. (5) Because of the pressure upon the governor's time he cannot give the petitions the consideration which their importance requires. (6) With changing governors no standard seems to exist on which pardons should be based. (7) If the power is abused, large numbers are thus released from the prisons, and law and justice are brought into contempt. In Illinois, from 1856 to 1876, ninety-two persons were sentenced to life terms. During this same period thirty-six were pardoned. Only one had served more than ten years. The pardoning of 396 prisoners at Christmas time, 1912, by Governor Donaghey, of Arkansas, as a rebuke to the convict labor system of that State, caused considerable discussion. Other governors by their actions have also called the matter to the attention of the public. Among governors who have had extensive pardoning records are Blease, of South Carolina; West, of Oregon; Comer, of Alabama; Small, of Illinois; and Ferguson, of Texas. Not only large numbers of pardons, but the pardon of notorious criminals, excites adverse comment. Thus when Governor Dix pardoned Patrick, convicted for the murder of Rice, without consulting the trial judge or the prosecuting attorneys, a great wave of protest arose in the newspapers. Even reputable journals were led to propose that no man should have the power to pardon criminals on his own individual authority.

It was felt that if political pressure was brought to bear upon a board, the purpose of the pressure would not be so likely of accomplishment as when exercised upon an individual. We shall have to wait for more experience before we can decide whether the pardon board is superior to a governor as the source of pardons.

Standardization in the Administration of Pardons. It has been sug-

gested that the evils of the pardoning power, whether by a single man or by a board, could be obviated were it possible to work out a system of standards according to which pardons would be granted. Almost every governor has his own standards.

In a number of States the regulations, either in the constitution or in the statutes or laid down by the pardon authority itself, make some attempt at standardization. In general, however, it may be said that no set of standards which deserve the name have been universally accepted in this country. At the best, since the matter of pardons is an attempt to correct injustices due to the imperfections of our court system, each case must be considered on its own merits. Only very general standards can be worked out, such as whether new evidence bearing upon the case should be heard, whether the recommendation of the judge, State's attorney, jurors, etc., should weigh, whether the condition of the man's family or the health of the man himself should have weight in determining the question of pardon, and whether pardons should be granted because of a technical error in the trial. Upon some of these there is a growing consensus of opinion, but so diverse is the practice at present in our States that it would be impossible to set up standards which would be generally accepted. In the meantime, therefore, whether pardons be administered by the governor with or without advice, or by a board of pardons, the best thing we can hope for is that the authority will keep solely in mind the public interest and make its determinations accordingly. There is, however, grave necessity that before a pardoning authority act in any given case a very careful study be made of the case.

Do Pardons Break Down Respect for Law? It has been charged that the use of the pardoning power breaks down the respect of criminals for the law because it furnishes the hope that the sentence may be commuted or the man pardoned. If there is any ground for believing that pardons are not in the interest of the public but the result of pressure, then without a doubt the abuse of the pardoning power does lessen respect for law and destroys the deterrent effect of penalties. If, however, pardons are administered with care and solely to correct injustice, they ought not to diminish respect for law. There is no evidence that when so administered they undermine confidence in the machinery of justice or in the value of executive clemency.

Would a Well-administered Parole Law Secure the Ends of Justice as Well as a Pardon? In 1914 the pardon board of the State of Louisiana announced that it had refused all applications for pardon, since the last legislature had given the board of control of the penitentiary the right to parole and because it believed that this parole body was best fitted to

The pardoning power is a confession of human fallibility, a response to humanity's protest against the injustice sometimes worked by our machinery of justice. So long as we insist on our antiquated methods of ascertaining guilt, and meting out justice according to a system of punishments based on the acts men do rather than upon the nature of the man and the circumstances under which he committed the proscribed act, and on setting forth in the law what he must suffer for any given misconduct without respect to the social results of his punishment, we must have some way of escape from intolerable injustice. With all its faults, the pardoning power provides that escape.

If a change should be made in the function of the court as suggested in the chapter on the courts, so that its function would be confined to the determination of guilt or innocence, and the treatment should be delegated to an administrative board, then the matter of pardon might very well go over to this board. The Minnesota Crime Survey has argued in favor of one board handling probation, parole, sentencing, and pardoning.¹⁵

RECENT TENDENCIES IN PARDON PROCEDURE

In the meantime, while executive clemency should be restrained in our treatment of the criminal, some improvement is possible in the procedure. The abuse of the pardoning power through political influence, personal interest, the weakness of governors, and the enormous power placed in the hands of one man has originated many suggestions for modification. It has been felt that even (1) *a wise governor should not have to give so much time from other important duties as is required for a conscientious examination of the many applications for pardon made to the governors.* One of the most important of these suggestions is that he should act upon the advice of other officials. Minnesota in 1857 was the first State to provide for a board of pardons. Other States have followed. While in legal tradition the right of the governor to intervene with a pardon is well established, and there is discernible very little tendency to take from him the right to pardon, there is an increasing tendency to relieve him of the heavy and unnecessary labor of investigating the applications by providing for a board to do this work and to make recommendations on which he may act. This improvement not only assists the governor in this important work but also provides the machinery by which much more careful and painstaking study of each case is possible, with the result that each application gets more careful considera-

¹⁵ National Commission on Law Observance and Enforcement, No. 4, *Report on Prosecution*, p. 142.

tion and the interests of both the applicant and the public are better safeguarded.

Since (2) *pardons and paroles are closely related, the question has risen as to why they should not be handled by the same board.* Certain cases can better be treated as paroles and others as pardons. Both are intended to release men from prison. That they are handled in some States by separate authorities is only an historical accident. Massachusetts illustrates the tendency to combine the functions of two boards which grew up as an intermediate step in the direction of unified handling of both pardons and parole. For some time in that State there had been a parole board and an "advisory board of pardons." In 1915 a bill was introduced to combine the functions of these two boards. The thoroughgoing study of the prisons in New York State in 1920 frankly faced the problem of pardons and paroles and made recommendations in line with the tendency noted above.¹⁶

It is a moot question (3) *whether or not judges and other law officials, and prison officials, should have anything to do with these boards.* The Massachusetts bill just referred to provided that the joint pardon and parole board in that State should consist of "three justices of the courts of the commonwealth, one of whom shall be a justice of the superior court, who shall be the chairman, and two associate justices of the police, municipal, or district courts of the commonwealth, to be appointed by the Chief Justice of the superior court, and any member of said board by the chief justice." On the other hand, Mr. Smithers contends that the judiciary should not be connected with the pardoning power. He notices that the Pennsylvania constitutional convention of 1873 rejected such a proposal, that the chief legal minds of the country are against such a plan on the ground that a judge is supposed to be blind to all but the law in the case, and that what is needed on a pardon board is a representative of the common people who will more nearly represent public sentiment. He is especially concerned that neither the trial judge nor the judge of appeals shall have anything to do with the pardon of a man who has been before their courts.¹⁷

Another tendency apparent in the recent discussions of pardons is (4) *emphasis upon the importance of thorough investigation of each applicant.* In the trial of one charged with delinquency, as a prerequisite to a program of treatment of each condemned person, and as a basis for good parole work, careful case study is necessary. So, before a pardon is granted, it is important that each case be studied from every aspect that will throw light upon the question as to whether the applicant is likely to conduct himself

¹⁶ *Journal of Criminal Law and Criminology*, VI, 114, 115 (May, 1915).

¹⁷ Smithers, *loc. cit.*, p 558.

properly. Such a plan would obviate the complaint that influence counts more in securing a pardon than the merits of the case.

Moreover, under the prevalent pardon procedure, the convict or his friends (5) *must hire a lawyer to present his case to the governor.* Under this system only those who have money or have friends willing to spend money for them can have their case brought to the attention of the governor.

Under the scheme proposed by the Prison Survey Committee of New York (6) *each man's case would be considered without the intervention of interested parties on the outside, and on its merits.* In some States where the present evils of the pardon law are understood, and where there is a pardon board which advises the governor on the matter, lawyers are not permitted to present a case.

In the matter of pardons, as in all other matters pertaining to convicts, it is coming to be recognized that only as science and good sense are applied can present abuses be eliminated.

QUESTIONS AND EXERCISES

- 1 Trace the history of pardons.
- 2 What are the dangers of pardons, if they are used for any other purpose than the correction of injustice?
- 3 Assume that a man appealed to you as Governor for pardon in whose case there had been no mistake made in trial and conviction and that the only basis of appeal was that his family was in great need of him, assume also that under the State law he could be paroled and that your study of the case led you to believe that he would do well on parole. Would you exercise your right to pardon? Why?
- 4 Assume that a mother's pension law in the State provided for the family, what would you do (a) in case your study led you to believe that the man would not repeat his crime? (b) in case you found that his previous record was bad, that he had not supported his family, or that he drank habitually?
- 5 What considerations favor a board of pardons and paroles to handle applications for pardon?
- 6 Outline the elements of a good pardon law.

CHAPTER XXXIV

PROBATION

KEEPING in mind the distinction between probation and parole, let us now consider probation as a method of treating certain delinquents. It is designed to avoid the evil consequences of incarceration and yet throw about the delinquent the influences which may lead him to a life of social usefulness.

Probation may be extended to a delinquent either after sentence has been passed by the judge or without the passing of a sentence. In the first instance, sentence is suspended and the man is put on probation; in the second case, he is put on probation without sentence having been passed. The meaning of the term is that he is being tried out (*probo*, "I prove") to see whether he can live in free society without breaking the law.¹

ORIGIN OF PROBATION

Massachusetts originated the practice of probation. As early as 1848 a Boston shoemaker, John Augustus, was asking the court to suspend sentence on young offenders and put them in his charge. About 1870 a French editor and sociologist, by name Girardin, published a series of articles in his journal, *La Liberté*,² attacking the practical results of imprisonment and showing the necessity of a change in methods of treating first offenders. He urged that they be made the wards of the community, kept in their usual social relations in free society, but under careful supervision and training. Whether these articles were known to those who devised the probation system in Boston or not we are unable to say. About that time an old gentleman known as Father Cook, who is described as a practical philanthropist and a man of leisure, had become interested in the youths who were

¹ "Probation is the term used in connection with the release of an offender under suspended sentence and without imprisonment, but under the oversight of a probation officer for a definite period of time and for the purpose of reclaiming him from evil courses. Parole is the term used in connection with the conditional release from a penal or reformatory institution after a period of incarceration therein" *Bulletin of the Prison Association of New York*, quoted in *Journal of Criminal Law and Criminology*, XIV, 140 (May, 1923)

² These articles were published in this periodical for June and July, 1868. In 1871 they were published in book form (Letter to writer from P. Cornill, Ixelles, Belgium)

brought before the criminal courts of Boston. He attended the court regularly to find out whether among the young people arraigned there were any whose offenses were due to circumstances rather than to character, who were not yet hardened and who might, under proper guidance, reform. Taking pains to investigate each case, he soon made a place for himself with the courts as an unofficial adviser. He seems to have had remarkable insight into human nature, and frequently the judges accepted his judgment and placed young criminals in his charge. In this way scores of boys were saved from entering prison and through his friendly influence were restored to self-respect and usefulness. As a result of this work, in 1878 a law was passed requiring the appointment of a probation officer for the city of Boston. Fortunately the first appointment was a remarkable man named Edward H. Savage, who had formerly been chief of police and who was a most efficient probation officer for fourteen years. Two years later a law was passed permitting the aldermen of any other city in the State and the selectmen of any town to employ a probation officer. Unfortunately the various communities of Massachusetts were not prepared to take advantage of this wise permission and therefore very little was done. In 1891 at the suggestion of Governor Russell a law was passed requiring the criminal courts throughout the Commonwealth to appoint probation officers and defining their powers and duties.

Since that date experience has justified the law, and changes have been introduced, such as increasing the number of officers and providing for women upon the force.³

The example of Massachusetts was followed only tardily by other States. In 1899 Rhode Island passed a law providing probation for both juveniles and adults and establishing juvenile probation, and Illinois and Colorado passed laws providing for juvenile probation, while Minnesota provided the same year for county probation officers for minors.

Perhaps more than any other influence, the invention of the juvenile court in 1899 gave a decided impetus to juvenile probation. However, from that date the development of juvenile probation and probation for adults has gone on separately. Wherever the juvenile court was set up, there was a direct incentive to establish juvenile probation. The influence upon adult probation was rather indirect.

In England the origin and development of probation came later than in the United States. For some time prior to the passage of the Children's Act of 1908 a number of persons interested in the welfare of the young

³ Lewis, "The Probation System," *Proceedings, National Conference of Charities and Correction, 1897*, pp. 38-42.

delinquents had tried to secure the hearing of cases against juvenile delinquents in courts apart from those of adults. As a matter of fact, by 1905 several of the larger towns of England had taken this step. At Birmingham the first separate court for children was established in April, 1905, and in connection with this court there was appointed the first probation officer in England for children.⁴ In 1907 was passed the Probation of Offenders Act. Under this law courts are empowered, despite the fact that an offense has been committed, to discharge those convicted either absolutely or conditionally. The law states that the court shall have regard, in considering whether discharge shall take place, to the character, antecedents, age, health, mental condition, nature of the offense, and extenuating circumstances. They may discharge, under these circumstances, either after conviction or before. They may place the offender under the supervision of a probation officer or other person and may lay down conditions of probation. The act provided special probation officers for children. In England, however, as in the United States, the law anticipated in many parts of the country the consciousness of need.⁵

DEVELOPMENT OF PROBATION

In 1931 thirty-six States, the District of Columbia, the Federal Government, most European countries, and a number of states of South America, Asia, and Africa had adopted adult probation, most of them making the appointment of probation officers permissible, a few requiring that it be obligatory. All but twelve of our States have adult probation laws.⁶ The whole country and its possessions with the single exception of Wyoming by 1925 had juvenile probation.⁷

In 1931 there were said to be 3,700 paid probation officers in the United States, while nearly as many volunteers were used by the courts.⁸ These figures, however, are likely to mislead us as to the growth of probation. In most States which have probation laws the law is permissive rather than mandatory. Hence one will find in those States that only the courts in the larger centers, where the people have become conscious of the need of probation, actually have probation officers. In the States where it has been tried

⁴ Ruggles-Brise, *The English Prison System* (London, 1921), p. 102.

⁵ Hobhouse and Brockway, *English Prisons To-day* (London, 1922), pp. 50-51.

⁶ National Commission on Law Observance and Enforcement, No. 9, June 23, 1931, *Report on Penal Institutions, Probation and Parole*, p. 152.

⁷ Personal letter of Mr. Charles L. Chute, Secretary, National Probation Association, to the writer.

⁸ *Better Times*, April, 1923, p. 19. Most of them were paid out of public funds, *Directory of Probation Officers of the United States and Canada* (National Probation Association, 1925), National Commission on Law Observance and Enforcement, *op. cit.*, p. 152.

out longer, it is being used more widely. Thus in New York State the number of adults placed on probation increased from 2,852 in 1910 to 23,302 in 1927.⁹ In Massachusetts between 1900 and 1929 the number on probation increased five times from 6,201 to 32,809, while commitments to institutions decreased. In Boston in 1918 probationers were to incarcerated prisoners as twenty to one.¹⁰

Probation for Women. Strangely enough probation developed later for women than for men. Women seem to have been considered less amenable to reformatory measures than men. Experience, however, has demonstrated that probation gives just as promising results with women as with men. For example, from a study of a year's court cases affecting 682 women in Detroit, it was found that 303 were closed, 81 per cent of which were closed as improved cases, 95 per cent of the whole number were not convicted again during the probation period, and 98 per cent were not committed on new charges.¹¹ Of these 31 per cent were felons and 65 per cent were misdemeanants, 20 per cent had previous police records, 5 per cent had been on probation before, and 27 per cent of the whole number had been pronounced abnormal by the psychopathic clinic. In a study made of 300 Jewish women by the Jewish Board of Guardians in New York City, it was found that the results were good. This study showed that 83.3 per cent of these probationers had been satisfactorily adjusted at the end of their probation. By "satisfactorily adjusted" is meant living under good home conditions, steady employment, and healthful recreation. In the follow-up of these cases it was found that 62.2 per cent of them were still doing well at the end of 1922, some of whom had been placed on probation in 1919.¹²

This is a very good record in view of the fact that those of the highest intelligence usually escape arrest and that mental tests given these women showed that some of them were of rather low intelligence; and that they were arrested for disorderly conduct, vagrancy, and incorrigibility; that while 272 of them were literate, only 4 per cent of this number had a high school education, and that 123 of them were venereally diseased.

⁹ Chute, *ibid.*, p. 559; National Commission on Law Observance and Enforcement, *ibid.*, p. 164.

¹⁰ Parsons, "The Tests of Probation," *Proceedings, Annual Congress of the Prison Association*, 1923, p. 152; *ibid.*, 1920, p. 36, National Commission on Law Observance and Enforcement, *op. cit.*, p. 164.

¹¹ Forniook, "Probation for Women," *Journal of Criminal Law and Criminology*, XIV, 605-619 (February, 1924).

¹² Menken, "The Rehabilitation of the Morally Handicapped," *Journal of Criminal Law and Criminology*, XV, 147-154 (May, 1924). It should be noted that the whereabouts of forty-four were unknown and these figures are based on a total of only 254, forty-six of whom were still on probation December 31, 1922.

Extension of Probation to a Larger Number of Crimes. As the good results of probation have been observed and the pressure upon the courts has increased, there has been a tendency to apply it to more kinds of crimes, and not to limit it to first offenders.¹³ In 1925 Congress passed a law providing for probation in the district courts of the United States.¹⁴

Probation for Children. Naturally the greatest development of probation has been in connection with the juvenile courts. The full significance of the almost universal use of juvenile probation in the United States is apparent when we recall that as late as 1884 in New York State—and in many other States more recently—for the lack of juvenile probation a boy would be sentenced to jail, or committed to a reform school, in either place being subject to the worst sort of corrupting influences.¹⁵

As a result of the extension of juvenile probation the old practice of fining children has been gradually dying out. Moreover, juvenile probation is rapidly displacing the old practice of a public reprimand by the judge when he did not wish to send the child to an institution.

We must not, however, be led to believe by these statistics that all courts dealing with children's cases in the United States have adopted probation and have set up effective probation systems. In 1921 the Federal Children's Bureau reported that there were only 321 "specially organized" children's courts in the entire country. These are to be found chiefly in the large cities, while a majority of the smaller cities have neither children's courts nor effective probation service. Even less frequently are they found in the courts in the rural counties.¹⁶

¹³ Wade, "Some Aspects of Probation," *Bulletin of the National Society of Penal Information*, December, 1923, p. 20; National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole*, pp. 153-155.

¹⁴ Chute, in *Journal of Criminal Law and Criminology*, XII, 564. After probation grew up in some of the States and numerous efforts to provide a probation system for the Federal courts had failed, the Federal district judges for a good many years followed the practice of suspending sentence in the case of some Federal offenders. This custom was finally decided by the Supreme Court (ex parte U. S., 242 U. S. 27) as having no warrant in the law and stopped on the ground that to do so was an interference with the legislative authority inasmuch as it allowed the judiciary to perform the functions of the legislative body, and further was an interference with the executive authority to pardon. This decision affected over 2,000 persons on suspended sentence from these courts. The Court, however, suggested that the President might pardon such as he thought worthy. This was done. Public No. 596, 68th Congress, approved, March 4, 1925, Chute, *American Law Journal*, LIX, 279 (April, 1925).

¹⁵ Folks and Towne, "Probation in the Juvenile Court," *Proceedings of the Academy of Political Science in the City of New York*, I, 682 (July, 1911).

¹⁶ Chute, *Probation in Children's Courts*, Federal Children's Bureau Publications, No. 80, p. 9.

Better Probation Officers. The most important development in connection with probation has been the effort to secure better trained and more adequate staffs. In the courts which have had the longest experience with probation the tendency has been to supplant the unpaid or partly paid volunteers with well-paid and trained probation officers.

HOW PROBATION WORKS

To one who has not been engaged in probation work it is a little difficult to describe how the system actually works. Perhaps some conception of the problems and processes in probation can be conveyed by some cases. The following description by Mr. Thurston, who once was a juvenile probation official, will help in this matter:

"Otto Wengierski, a fifteen-year-old boy, was a thief. The evidence of the bookkeeper from the office where Otto had worked had convinced the Judge, and even Otto himself, that he had of late received more postage stamps from the bookkeeper than he had put upon the letters he had mailed. Otto had not openly admitted this to the Judge, but when the Judge asked him what he thought should be done with him he broke out. 'Don't send me away, Judge, I won't do it again if you'll give me another chance.'

"'All right,' said the Judge, 'I'll take you at your word, and give you another chance to make good at home. But I will put you under probation to Officer Josephson, who will come frequently to see you and your father and mother and report to me how you are getting on. I expect you to talk things over with the officer and tell him all about how you came to do this. Report to him whenever he says, get a new job or else go to school, cut out stealing, and show me that you mean what you say. Remember, Otto, I expect to hear better things of you. Call the next case, Mr. Clerk.'

"As a bunch of boys, charged with loafing and shooting crap, crowds up before the Judge, to be followed in turn by boys who have stolen pigeons, girls who have kept bad company, girls who have stayed out all night, girls who have stolen bits of finery from the shops, and still other boys from rival groups who have fought in the streets and broken heads and windows, to be followed by still others who have been habitually truant from school, who have upset push carts, broken into candy stores and slot machines, stolen junk, carried off booty from freight cars, and so on through the list of juvenile offenses, Officer Josephson and Otto go out of the court room together to begin their new relation of probation officer to probationer. Mother and father follow.

"The boy had been arrested on complaint of his employer. During the three days before his appearance before the Judge, he had had a medical and physical examination by a doctor and a mental examination by a psychologist. His mother had been present at the mental examination and had willingly given many supplementary facts about herself, and about the birth, infancy, health, schooling,

etc., of the boy, but of the boy's father and of the financial and other social problems of the boy and the family she had told little or nothing beyond the fact that the father was not living at home and that the boy was.

"After leaving the court room the probation officer explained to Otto and his parents what his duties as probation officer were, gave the boy a probation card which stated the conditions of his probation, made arrangements to see each of them alone soon at places convenient to them, and expressed the belief that whatever mistakes the boy had made could be avoided in future if they would all be open and honest with each other and all work together.

"The personal talks of the next two days, together with a careful reading of the examinations made by the doctor and psychologist, showed these facts about the boy and his family:

"That the father was lazy, given to sharp tricks in business, with no permanent job, not allowed by the mother to live at home on account of questionable personal habits and irregularity of income, but fond of Otto and rather admired by the boy for his smartness. Father and son often took luncheon together and often went to movies and cheap theaters whenever the father had money.

"That the mother had taken up dressmaking to help keep the home together for Otto and his sister of twelve. That she was not given to complaints about her hard lot, always hard up for money, took all of the six-dollar wage that Otto received, and continually urged him to try to get a job that would pay more.

"That the little girl was the pet of all the others and at all costs must have good clothes and go to school. Otto had more love for her than for anyone else.

"That Otto himself was of a bright mind, nervous organization, given to bad personal habits, and led into bad recreational habits by his father, as well as familiarized with sharp business practices that were as near dishonesty as the law would permit. The stamp stealing experience that brought him into court was not his first experience at petty stealing. The others had not been detected.

"In short, Officer Josephson found out that if he was to make effectual plans for his care of Otto while on probation he must consider not only the fact of his repeated stealing but at least these other facts:

- "1. His nervous organization and tendency to bad personal habits;
- "2. His active mind and need of recreation;
- "3. His broken home and divided loyalty;
- "4. The questionable moral and business example and ideals of his father;
- "5. The financial stress of his mother;
- "6. His love for his sister and his strong desire to help her and his mother.

"The stealing by Otto was of course wrong, but it was more significant as a symptom of the physical, mental, social, economic, and immoral stimuli which together were driving him on toward repeated delinquent acts.

"Therefore a good team game between the probation officer and Otto and his family must aim not only toward the prevention of further actual dishonesty by Otto, but also toward a wholesome adjustment of all the underlying factors.

in his personal and family life that, unless adjusted, would be likely to lead not only Otto but his mother and sister into further trouble

"Building upon the sound basis of all the essential facts in the case Officer Josephson was able gradually not merely to prevent further stealing by Otto but to help him to build up clean personal habits and better health, better balance in his recreation, sounder business ideals; to secure more regular contribution toward the family budget by the father; and finally, through the real interest in and love for both Otto and his sister by both father and mother, to bring about at least a formal and economic restoration of the father to the family circle.

"Although the personal and social facts of importance back of each one of the thousands of other boys and girls who are brought into our Juvenile Courts no doubt differ somewhat in every case from those which Officer Josephson found in the case of Otto, the start in good probation must always be made in practically the same way, namely: by finding out all the important facts in the case and by starting out on an intelligent constructive plan of probationary care that takes all of these facts into consideration with an open mind toward the discovery and use of more facts as they appear."¹⁷

A case illustrating the work of an adult probation officer will perhaps throw light upon the way in which his work is done:

"The boy of 19 was the second of nine children. He was a native of the city in which he was arrested. His family history was most discouraging. His mother, an inebriate and prostitute, had died in the County Hospital of Tuberculosis, and had been treated for syphilis several years before the young man came to our notice. The father was a degenerate, shiftless and a drunkard. He had always neglected his family.

"At the age of 9 years, the probationer had been turned over to his grandmother, a respectable woman, while three of his brothers and sisters were placed in an orphan asylum from which two of them had graduated into an Industrial School and a Reformatory. One child was feeble-minded and was confined in a Custodial Institution. The probationer, as disclosed by investigation, had grown beyond his mother's control at an early age, although remaining in school until he reached the eighth grade. According to intelligence tests, he was rated as of normal mental development. During his late adolescent period, he had developed into a corner lounger and an inveterate cigarette smoker. He had had several sex experiences of an unsavory character, and had contracted a social disease. Before coming to our notice, he had been in court on one occasion. We were asked to investigate him after his conviction for burglary. His work record, needless to say, was of little account. His recreational and mental interests previous to our contact with him had been anything but constructive or uplifting.

"Despite this dark background, the probation officer, because of the young

¹⁷ Thurston, *The Probation Officer at Work* (The New York School of Philanthropy, New York), pp. 3-8.

man's youth, his apparent attitude of repentance and his good health, recommended his release on probation. The Court, after some study of the problem, followed the recommendation.

"The task of guiding this youngster into more acceptable ways of living was a delicate one. It was finally accomplished, however, through the cooperation of a boys' work agency and the young man's grandmother, a responsive individual. The first thing done was to find a suitable home, and work for which the young man was fitted. Having done these things, the officer induced the boy to save his money, clothe himself properly, and in that way stimulate his sense of pride and responsibility. He was later persuaded to attend church and gradually led away from his former companions and other demoralizing influences. He became interested in athletics at the boys' work agency where he resided and began to enjoy healthy recreational interests as a result. He finally gave up the use of cigarettes. In time he was induced to contribute toward the support of his grandmother, pay in restitution the sum of \$35.00, the amount lost by the complainant as a result of the probationer's offense, and as a climax to his good conduct, he paid out of his own earnings the funeral expenses of an aunt who died while he was still under supervision.

"Three years have passed since this young man was discharged from active supervision. Contact is voluntarily maintained between the probation officer and the boy. He is working for a large railroad concern, holds a fairly responsible position, and is earning a steady substantial income. The solution of his difficulties lay simply in a readjustment of his relationships, and the guiding of his interests into constructive channels, and it was possible to do these things for him while he remained at liberty in the community."¹⁸

From these cases it is apparent that the probation officer does his work like the physician or the school-teacher. He meets his problem and endeavors to apply all the good sense, information, and training he has to adjust the probationer to his situation. What he does depends upon his equipment to get the confidence of the probationer, change the environing circumstances, suggest new habits, pursue a course that will lead the probationer to adopt his suggestions, and bring to play upon him all the resources of the community to accomplish the desired change. Mr. Thurston cites a school principal who showed this adaptability to a situation. At the close of school on a Friday night he was told that an overgrown, ill-bred, stubborn boy had been so insolent to a woman teacher that she had dismissed him with the statement that he could never come into her class again until he apologized. The principal knew the boy well and was well acquainted with his home and friends. So interested was he in the welfare of his boys

¹⁸ Murphy, "How Probation Works," *Bulletin of the National Society of Penal Information*, December, 1923, pp. 14-19.

and girls that he bent every energy of body and mind and used all of the resources at his command for the welfare of these children. This boy lived some distance from the school and came by train to attend. The principal took a train, called upon the grandmother, and explained to her the whole situation. The grandmother saw the girl friend of the boy, who in turn saw the boy, got him to tell her his story, and brought such pressure to bear upon him that on Monday morning he was back at school and apologized. He was unconscious of the machinery which had been set in motion to bring about this result, but the consequence of this action on the part of the principal was that this crisis in the life of the boy which might have meant dropping out of school and an entirely different career, was met by his skilful work. The successful probation officer exercises the same alertness and resourcefulness in the treatment of his cases.¹⁹

RESULTS

Probation has now been in operation long enough so that in fairness we may ask, what are its results? While we still need more careful studies than we have had, we fortunately have some figures which will help us to answer this question. In England where probation is more recent than in the United States, but where they collect their statistics on crime for the whole of England and Wales, we have some indications of the results of its working. Ruggles-Brise reported that from 1909 to 1913 the percentage of revocation of probation orders had not averaged more than six.²⁰

In the United States, while our statistics are not nation-wide, we fortunately have in two States very good probation commissions which have for a number of years exercised supervision over the local probation officers and have studied their problem.

Obviates the Evils of an Institution Experience. Among the aims of probation were the prevention of contamination in a correctional institution for young offenders, first offenders, and those whose crimes involved mitigating circumstances. It was seen that the results of throwing such people into prison were so brutalizing and so often resulted in confirming the offender in a criminal career that it was hoped through probation society could be protected and at the same time the evil results of correctional institutions might be obviated.²¹

¹⁹ Thurston, *op. cit.*

²⁰ Ruggles-Brise, *The English Prison System* (London, 1921), p. 112.

²¹ For an excellent statement of the psychological and sociological treatment in an institution and under probation see National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole*, pp. 147-149.

Socializes Criminal Procedure. Moreover, the probation system has assisted the court. In some States the probation officer conducts a preliminary examination which is an essential part of the system and supplies the judge with facts concerning the individual and his offense.²²

It has also greatly simplified the problem of the court in domestic relations cases. Once the problem of what to do with a man who failed to support his wife and children was a puzzling one to the court. Under the law he had to be punished, but if he were sent to prison he could not support them and probably would be made worse than before. Now, under adult probation, he can be tried out under the supervision of the court, subject to the influence of a probation officer who may be able to impress upon him a sense of his responsibilities, thus saving the State the expense of his care and the support of his family.²³

Effects on Individual Delinquents and Their Families. What has been the effect of probation upon delinquents themselves? In a recent study made by the Massachusetts Commission on Probation it was found that "a marked difference in the extent of subsequent court records is shown between the boys who were carried through the probation term and those who were surrendered and committed to institutions. Of the 239 boys carried through the original probation without surrender and commitment, 143 (60%) had no subsequent court record. Of the 55 who were surrendered to the court for misconduct while on probation and committed to institutions, 23 (42%) had no subsequent court record."²⁴

In Massachusetts in the adult cases classified under the general heading of "General Offenses," 59 per cent made satisfactory response during the probation period, 18 per cent made less satisfactory progress, while only 9 per cent failed and were surrendered to the court and committed by it to institutions. If there be added to this 9 per cent those who disappeared, 22 per cent may be counted as failures. In round numbers, then, the Massachusetts experience shows that *about 78 per cent came through the probation period successfully*. Massachusetts is the only State which has followed up carefully those who had been on probation over a number of years. The study of the matter in that State shows that *65 per cent of those on probation had no subsequent court record*.²⁵

In Detroit from January 1 to September 30, 1922, only ten men who

²² Wade, "Some Aspects of Probation," *Bulletin of the National Society of Penal Information*, December, 1923, pp. 22, 23.

²³ *Ibid.*, p. 20.

²⁴ *Report of the Commission on Probation*, Massachusetts Senate Document No. 431, March 15, 1924, p. 31.

²⁵ *Ibid.*, p. 27.

had been placed on probation on felony charges were brought before the judge for breaking the terms of their probation. Twenty-four more were sentenced for committing another offense after being placed on probation. In short, only thirty-four men out of 1,151 broke probation. This is not quite 3 per cent of those male adults who had committed State prison offenses. Among 2,825 misdemeanants above the age of seventeen handled during the year ending June 30, 1922, less than 3½ per cent failed to keep the terms of their probation. During the first nine months of 1922 men who were placed on probation for offenses against property, in which they were ordered by the judge to make restitution, had repaid \$10,572.98. In addition it is estimated that instead of being a charge upon the State for their care in an institution, they earned for their families a total of \$463,818.55.²⁶

Mr. Chute is authority for the statement that a study of the New York State Probation Commission of 100,000 adults put on probation for the fourteen years ending 1921 showed that 77 per cent of those whose probation terminated during that period were successful. In Erie County, New York, a study in 1920 showed that of 200 consecutive cases placed on probation, approximately three and one half years before, 81 per cent had been discharged as successful. Of those who had been discharged two and one half years before, 72 per cent were still making good.²⁷

One must not forget in connection with these figures that the only study made of the conduct of probationers after the release from probation is that of Massachusetts. Consequently we may expect that the figures given for successful probation are rather high. More studies should be made of what has happened to those on probation in years subsequent to release from probation.

The Expense of Probation. The probation system not only saves men—it is cheap. In New York State the average cost for the support of a man, if he is imprisoned, is \$555.72, while the total cost of one year's probation supervision is \$29.34; in Ohio the figures were respectively \$236 and \$32; in Massachusetts, \$350 and \$35; in Indiana, \$300 and \$18.²⁸

During 1922 in New York State 39,706 persons were on probation. The total amount collected by probation officers from these probationers for family support, fines and restitution, amounted to almost \$2,000,000.²⁹ For

²⁶ Marsh, "Detroit Succeeds under a New Organization," *Journal of Criminal Law and Criminology*, XIV, 20 (May, 1923).

²⁷ Chute, *Probation in Children's Courts*, Federal Children's Bureau Publications, No. 80, pp. 7, 8.

²⁸ National Commission on Law Observance and Enforcement, No. 9, *Report on Penal Institutions, Probation and Parole*, p. 168.

²⁹ "The Cost of Probation," *Better Times*, November 5, 1923, p. 13.

the fourteen years from October 1, 1907, to September 30, 1921, 233,100 persons were placed on probation in New York State. During this time the probation officials collected from probationers a total of \$5,504,212.39. Of this amount \$4,726,388.52 was collected from non-supporting and deserting husbands for family support, \$268,780.59 was collected for fines to be paid in instalments, and \$509,043.28 was collected for restitution. In addition the probation officers supervised the payment under court orders of \$2,816,900.71 direct to probationers. In that State the tendency to use probation to collect payments from men who have failed to support their families has increased. Formerly they were sent to jail and their families suffered for the necessities of life or became objects of charity.³⁰

However, it is a question whether the use of a probation officer as a collector makes for those close relations with a probationer necessary to effective work.

There can be no doubt that probation represents an enormous saving in money in those cases where it can be applied without danger to society. It cannot be applied to all cases, but it is especially applicable to family desertion, non-support, and certain forms of crimes against property. Since these represent the largest percentage of crimes, the monetary importance of probation is significant.

CRITICISM

Probation has been severely criticized. It has been charged (1) that it often results in more regard for the delinquent than for the injured party, (2) that when applied to all first offenders without regard to mentality, personality, and previous history of the offender it results in recidivism; (3) that it is difficult to ascertain whether the delinquent is a first offender, and therefore repeaters often are admitted to probation to the injury of both the criminal and society; and (4) that probation officers are so inefficient that probation is a farce. Some illustrative cases will point these criticisms and prepare us to appreciate the principles approved by experience which should govern probation.³¹

Unwise Use of Probation. In 1915 Professor Kocourek pointed out that if the probation law is made to apply only to first offenders, in the field of *crimes against property* of those injured only those will prosecute who feel that the gain through restitution will be greater than the trouble and expense involved. The result is that "the probation system tends to make a victim of the person injured in favor of the wrong-doer." He argues

³⁰ *Journal of Criminal Law and Criminology*, XIV, 144-147 (May, 1923).

³¹ Perkins, "Mental and Moral Problems of the Woman Probationer," *Mental Hygiene*, VIII, 506-521 (April, 1924).

that when the first offender knows that he is likely to be admitted to probation and that the difficulties of conviction are great, and that even if he is convicted the court may not order restitution, he is more likely to take the chance than if he knew that probation is impossible. The gist of Professor Kocourek's argument is that in all such cases the deterrent effect of punishment is largely eliminated and society is left at the mercy of cunning criminals. The limitation suggested is that the probation system should be so guarded that it "does not for the purpose of reforming the offender, inflict an evil on the person injured, and does not by its leniency encourage the commission of crimes."³²

The evils which result from the use of probation for certain *mental defectives* is illustrated by the following:

E. W. was committed to the house of refuge on Randall's Island in October, 1921, on a conviction of burglary. The investigation showed that he was probably a defective delinquent. At the time he was seventeen years old he had been before the children's court on numerous occasions. He had also been in a corrective institution at three different times. Each time he had been paroled from the institution and twice while on parole he had been arrested for petit larceny, and each time placed on probation. This treatment had been given him in spite of the fact that after he arrived at Randall's Island a mental examination showed a mental age of only 9 5 years, with an intelligence quotient of 59. He was a problem within the institution on account of his low mentality although he usually behaved himself, was paroled, and within six months left home and wandered about the country. He was arrested charged with burglary, and convicted by the court. After his conviction the court requested a report from the superintendent of Randall's Island. This was given, showing the probability that he was a fit inmate for the State institution for defective delinquents. The probation officer transmitted this report to the court and yet in spite of it he was placed on probation. Within a week he left home again, a week later was arrested for burglary, indicted, convicted and again placed on probation. He again left home, was again arrested and convicted and was then sent to a reformatory.³³

This case of a mental defective is clearly one which should not have been admitted to probation, or else special oversight should have been provided. Moreover, the very fact that he had been in trouble so frequently before might have suggested to the court that he was not a proper subject for probation.

³² Kocourek, "An Unconsidered Element in the Probation of First Offenders," *Journal of Criminal Law and Criminology*, VI, 14, 15, 117 (May, 1915).

³³ Helbing, "When Should Probation End, or, The Misuse of Probation," *Seventeenth Annual Conference of Probation Officers*, Syracuse, New York, November 10, 1924.

Probation is sometimes used for *repeaters*. The following is such a case.

An inmate of the House of Refuge had already been on probation several times for offenses and also had an institutional record. He was returned three times for violating his parole. After the last parole he was arrested charged with robbery with a gun, was indicted by the grand jury on several counts, and remanded to the county jail to wait trial. Then he pleaded guilty to one indictment. He was a boy who was exceptionally bright and came from excellent surroundings. The facts of his past record were before the judge when he pronounced the following sentence:

"I am going to send you to the County Jail for a term of six months. You have been in jail for four months and I will suspend sentence on the balance and place you on probation for that period."³⁴

It is evident that probation is not suited to such a case, although sometimes recidivists may be put on probation.

The result of such probation work is that those who are subjected to it are encouraged in the belief that no matter what they do they will not be severely dealt with.³⁵

Probation officers often fail to administer it in a way which will produce good results. This poor social practice arises from the *lack of qualifications in the probation officers, from an overload of cases, or from the lack of proper supervision*. Says Mr. Chute, Secretary of the National Probation Association,

"Criticism of probation work as poorly administered or undermanned is frequently merited . . . There is not a probation office in the country, with two or three conspicuous exceptions, which has enough probation officers to give the careful attention to cases under supervision which they need. All courts need the services of both men and women probation officers. . . . The most important work of probation officers is in the field, visiting the homes of their charges; hence, they should have adequate clerical assistance "³⁶

PRINCIPLES OF PROBATION

Out of the experience of twenty-five years with probation, certain tentative principles have emerged. These principles may be summarized as follows:

1. *Good probation work must be based on thorough investigation.* Unless this is done, persons will be placed upon probation who should be sent

³⁴ *Ibid*, pp 7, 8.

³⁵ *Ibid*, pp 10, 11.

³⁶ Chute, "The Probation System—What It Is What It May Become," *Bulletin of the National Society of Penal Information*, December, 1923, p 11.

to an institution and offenders will be sent to institutions who should be placed on probation. Poor investigation is illustrated by the following case:

A boy sixteen years of age was sent to an institution for petit larceny. The probation officer from whom he was committed reported that he had had him on probation on two other occasions. A careful investigation by the parole officer of the institution brought out a fact which the probation officer had not discovered, viz. that while living in another city the lad had been arrested for robbery, had been placed on probation, and had also been placed in a reformatory. This was not known to the court when he was placed on probation the last time. It is clear that the probation officer of the city from which he came should in the very first instance have found out his previous history, before he was placed on probation the first time.³⁷

2. *Investigation and treatment must be individualized.* Each offender must be studied and treated as an individual. Different cases will require different methods of investigation, and the probation officer in attempting to correct the client's behavior must adapt his methods to the individual case. This principle condemns laws limiting the length of time adults may be kept upon probation. Uniform rules as to reporting to the officer and uniform conditions imposed upon every case (found in many of the early regulations for probation officers), violate this principle.

This principle has especial application to juvenile probation. Since the young offenders, if not corrected, will probably be serious problems as they grow older, it is important that each case be individualized both in diagnosis and in treatment.³⁸

3. *The term of probation should not be fixed in advance.* Probation should continue until the court and probation officer are convinced that the probationer will conduct himself well or else that probation is hopeless. Every careful study of the results of probation has demonstrated the soundness of this principle.³⁹ At the present time in most States the terms of probation are too inelastic.

A State-wide study in Massachusetts showed that:

“ . . . a distinctly better showing is made by the boys who were on probation for a period of one year or longer than by the boys on a shorter period,—tested by the number committed to institutions. It is probable that the cases of more

³⁷ Helbing, “When Should Probation End, or, The Misuse of Probation,” *Seventeenth Annual Conference of Probation Officers*, Syracuse, New York, November 10, 1924, pp. 9-10.

³⁸ *Report of the Commission on Probation*, Massachusetts Senate Document No 431, March 15, 1924, pp. 37-38.

³⁹ *Ibid.*, p. 47.

serious bad behavior were the ones kept on probation the longer time, but that disadvantage was so far overcome as to make their showing in subsequent careers notably better.”⁴⁰

4. The home and neighborhood must be used to rehabilitate those on probation, especially juvenile offenders. If home conditions have a great deal to do with the making of juvenile delinquents, then proper home conditions, when the juveniles are on probation, are of the greatest importance. In Massachusetts boys from broken homes and boys from homes with drinking parents showed poor response to probation. Probation failed in only 16 per cent of the boys from homes with both parents present, and no bad conditions; in 30 per cent of those from broken homes, and 40 per cent from homes with drinking parents.

Neighborhood conditions, too, have much to do with the success of probation. For example, probation of those from favorable neighborhoods showed failure in 35 per cent, of those from unfavorable neighborhoods 67 per cent.⁴¹ When both home and neighborhood are bad the prospect of successful probation is still poorer. Some of the juvenile courts have found it well to change the home and neighborhood environment when the boy is put on probation.

Numerous illustrations might be given of how delinquents have been affected by a change in home and community life. Miriam Van Waters cites such a case which, while unusual, illustrates the point:

“Sally is a girl of sixteen. She is married, has a healthy well cared-for baby, a ranch with chickens, pigs and goats, a pretty bungalow, an automobile, a husband with fine mustachios. When she was first brought to Juvenile Court she was twelve, a frail child with spinal curvature, twitching movements and weak heart. Her intelligence was dull average. She had temper tantrums, beat and scratched her mother, who was an invalid, swore at her stepfather, who was blind, refused to go to school, was cruel to animals, even putting them to death, was incorrigible in three private homes. Study of this case revealed a girl with craving for dressing up and showing off, there were other symptoms of self-love and infantile desires which her mother’s illness and stepfather’s harshness had fostered. Placed in a twenty-four hour school, her behavior was a source of anxiety to her teachers, her profanity, temper and running away seemed to yield to no one save the superintendent, and in periods of jealousy this woman could not control her. She was not a success at the school, yet gained there a true picture of her home situation and herself (for several weeks she was under daily observation by the psychologist), physical restoration, knowledge of gardening and home-making, and a genuine basis for self-confidence.

⁴⁰ *Ibid.*, p. 35

⁴¹ *Ibid.*, pp. 45-47.

"Suddenly she ran away with a young man, a chance 'pick-up' He kept her overnight, then took her to her parents, who literally threw her out. She was again brought before the court. Obsessed with the idea that she was to have a child, she pleaded to be allowed to go to her sister, a young married girl of twenty. In this home Sally saw happy married love for the first time in her life. She became devoted to her sister's baby and gave up her fancies of being pregnant. There were some backslidings, but nothing catastrophic until Sally, with final gesture of independence, ran away with a rancher whom she captivated in a single visit, as is the short-cut custom of the delinquent girl. They were married immediately. Over fourteen months have passed. Sally is a patient, hard-working mother and wife, every trace of waywardness has vanished as if it had never been. Her devotion to child and husband, gentleness with animals, can be observed daily, together with her pride in her worldly possessions. She is a normal member of her community, her past history could not be guessed by the most experienced.

"In this case, in spite of the fact that the young sister could offer little supervision, or wisdom of treatment, and in view of the fact that Sally's conduct amply justified a correctional school commitment, the court placed her in the one situation where it was possible for her to enter normal, constructive human relationships. Her career in the average institution would probably have resulted in rioting, further delinquency, and a fixed psychopathic personality."⁴²

5. Both diagnosis and treatment must take account of physical and mental conditions. By knowing the facts concerning certain physical and mental conditions, the probation officer is better equipped to handle his cases with understanding and with greater hope of success. The juvenile courts in some of our large cities were the first to provide such physical and mental examinations.⁴³ Increasingly it is being recognized that every court placing men on probation should have facilities for physical and mental examination in certain cases. Yet, these measures are no substitute for the art of handling the case properly by judge and probation officer, they are only aids.⁴⁴

6. A definite plan should be formulated for the client and adapted to his needs, as experience with him shows necessary. Says Miriam Van Waters:

"Probation officers, in cooperation with the clinic, should develop a definite program, or plan of life, for the child, which secures proper social relationship

⁴² Van Waters, *Youth in Conflict* (New York, 1925), pp 188-189.

⁴³ Cooley, "Current Tendencies in Adult Probation," *Proceedings, National Conference of Social Work*, 1918, p 144.

⁴⁴ Menken, "The Rehabilitation of the Morally Handicapped," *Journal of Criminal Law and Criminology*, XV, 147-148 (May, 1924). See Glueck and Glueck, *One Thousand Juvenile Delinquents*, etc (Cambridge, Mass., 1934), p 166.

with home, school, church, neighborhood, playground, industrial and social service groups. There should be a fixed policy of supervision of work of the individual officer, and frequent conferences with all those who come in contact with the child. Results of probationary treatment should be checked up every six months, or more frequently, and methods revised as conditions change. If treatment is not working, some carefully deliberated new plan should be made. It should be remembered that intelligent probation service is restricted to a small proportion of juvenile courts. It has not been applied to the majority.”⁴⁵

7. The program should include cooperation with all the agencies of the community which can help. Many a probation officer has found success where before he experienced only failure by using the information available in other social agencies in the community concerning the family of his client. Sometimes it was the school, sometimes the church, often the family welfare agency or some other organization in touch with this individual or family. The same thing is true with respect to securing the cooperation of other agencies in the matter of treatment. Often the probation officer can successfully invoke the assistance of the church, the Boy Scouts, the Big Sisters, or some group of men or women who can render excellent supplementary aid to his own efforts.⁴⁶

8. Probation officers should be trained. The grave difficulty with most of our probation work is that we have so many untrained officials, especially in the adult field. These officials have the most delicate and important task of any one in the community, yet how frequently they have never had any chance to learn to work according to the best standards known. Says Miss Van Waters:

“The probation staff should be well trained social workers of good personality. The minimum requirements of the Juvenile Court Committee on Standards should be followed. The fact that entirely disqualified persons serve as probation officers is the chief cause when probation fails to reduce delinquency. Probation is doomed if served by ill-trained, half-educated, incapable officers, or if it over-loads with too many cases its good, well-trained officers, or if the probation office is administered politically. The personnel of the probation office is the most important single consideration in a community program for treatment of juvenile delinquency.”⁴⁷

9. Probation officers must be well paid. If probation officers are to be trained people, they must be paid more than a farm laborer or a ditch-digger. Says Mr. Chute:

⁴⁵ Van Waters, *op. cit.*, p. 263.

⁴⁶ *Proceedings, National Conference of Social Work, 1918*, p. 145.

⁴⁷ Van Waters, *op. cit.*, p. 261.

"Probation officers as a class are among the most underpaid of all public servants. In many courts, because of the newness of the probation office, the anomalous situation prevails that court attendants, and clerks receive higher salaries, whereas the qualifications for the work do not compare with those needed for probation officers. Probation officers require good education and special training and experience along sociological lines. They must have ability to meet all kinds of people, and they must be persons to whom can be entrusted authority and responsibility. Their work ranks with other important professions, such as teaching and even the law, and should be paid as well. Chief probation officers in the large courts have positions of great responsibility, their work is on a par with that of the judges, and they should be paid accordingly." ⁴⁸

10. Supervision of the offender should not be lax nor yet too close. According to Miss Van Waters:

"One of the obstacles to permanent adjustment of delinquent girls is too close supervision. Constant watchfulness, ready-made plans, excessive advice, free help in time of trouble, a kind of fussy, brooding anxiety tends to make a girl on probation either helpless or rebellious. She cannot cast off her crutches. To workers, who know the dearth of good probation work throughout the country, this may cause a smile; but there is vast difference between slackness, ignorance, indifferent neglect, which one sees constantly among probation officers and social workers, and an intelligent, sturdy policy of faith and non-interference with natural processes of growth" ⁴⁹

11. Each case must be handled by what is known as case-work methods. To quote Miss Van Waters again:

"A girl abandoned in infancy by both parents, adopted into a worthless family, abused and forced into a laundry before she was fourteen, seduced by a moving picture director when she tried to sell a scenario, given by the director to one of his friends, who in turn passed her on to those to whom he had business obligations,—stage hands, men of different race; finally after six months of passive delinquency, brought before the court at fifteen, infected, bewildered, apathetic, exhausted. The same girl at twenty, married, a careful mother, a member of the best social circles, wife of a prominent man, a woman who possesses charm, taste, gentleness of manner, insight and an ability to serve other young people whom she has an especial gift in reaching,—is one illustration of successful case work" ⁵⁰

12. Probation should be extended to rural communities. In this connection Chute says:

⁴⁸ Chute, "The Probation System—What It Is What It May Become," *Bulletin of the National Society of Penal Information*, December, 1923, pp 5, 11-12.

⁴⁹ Van Waters, *op cit*, pp 194-195

⁵⁰ *Ibid*, p 191.

"In most states there is still need for pioneer work in the extension of probation from its application to perhaps two or three of the larger city courts to all the cities and rural districts of the state. Good probation work is especially needed in the rural courts, because of the lack of other social agencies."⁵¹

Massachusetts, Wisconsin, and New York have made commendable progress in thus extending the work, but even here much remains to be done. An amendment to the New York probation law in 1909 provided for the appointment of county probation officers by the county judge not only in the county court but also in all courts of towns, villages and third-class cities within the county. The value of a probation officer in rural communities is illustrated by the following cases:

(Case A) "A gang of four boys in a village in Eastern New York broke into five houses and a barn, where they stole valuables and committed other depredations. The property holders urged that the boys, and especially the leader of the gang, be committed to a juvenile reformatory. On the report of the probation officer who found that their motive was chiefly mischief and that they were not vicious, the court placed them on probation.

"The probation officer required them to attend school regularly and to keep good hours, and treated them in a friendly, helpful manner, which they appreciated. As a result of his advice and oversight their conduct became satisfactory. Their probation expired four or five years ago, and at the time of our last inquiry, two of the boys had good employment, one was in high school, and the other was attending college.

(Case B) "A shiftless father who seldom worked steadily and was often drunk, was placed on probation by a court in Southern New York, upon condition that he keep employed and provide properly for the support of his family. As a result of the probation officer's oversight the man obeyed the requirements. At the end of the probationary period the wife told the probation officer that she had not been so happy or so well provided for during the past five years as while her husband was on probation.

"If instead of being put on probation the man had been sent to jail, the county would have had to maintain him in idleness, and his family would probably have had to be supported by charity."⁵²

13. Either State supervision or State probation is necessary for effective work. In States where probation is carried on by the local unit under the court, and where over a long period a State probation commission has succeeded in developing good probation work in all the units, like New York and Massachusetts, local administration with State supervision works well.

⁵¹ Chute, *op. cit.*, pp. 11-12.

⁵² New York State Probation Commission, *County Probation Officers* (Albany, N. Y., 1912), pp. 9, 10.

Such a plan, however, requires a long time to develop. On the other hand, in the States like Wisconsin, where it has been difficult to get county boards to provide the necessary funds for paid probation officers, a State probation department for adults has worked well. The entire State has been covered, the force of officers has grown rapidly, uniform standards have been applied, and judges have come to see the value of probation. The result in that State has been such an increase in probationers as no one ever hoped for. New York and Massachusetts are the only two States which have a thoroughly worked-out plan of State supervision.⁵³

14. Probation should be indeterminate. Probation, like imprisonment and parole, to-day is suffering under the limitations put upon it by the statutes. In most of our States probation must be terminated when a man has finished his maximum sentence. Certain offenders may not be admitted to probation, and there is a great difference between judges even in the same State in admitting men to probation. The present chaos in this field could be reduced to order if, after the determination of guilt, the court were to hand over to a treatment board all prisoners, allowing this body to determine whether the man should be put on probation or placed in an institution. Remove all limitations upon the exercise of authority by this body, then responsibility will be placed definitely upon this group to handle the man in accordance with the facts revealed by a careful investigation. Allow them to keep the man on probation as long as they think necessary and give them the power to send him to an institution if probation is not fitted to his case.

QUESTIONS AND EXERCISES

1. A man has been found guilty of stealing food for his starving family. He is called before the judge before being sentenced and told that he will be required to work and pay back the value of what he has stolen and the costs of prosecution, and will have to report once a week to an officer of the court. Is that parole or probation?
2. Assume the same circumstances, but the judge passes sentence as laid down in the law for such an offense, and then suspends the sentence and lays upon the man the same conditions. Is that parole or probation?
3. Trace in outline the origin and early development of probation (a) in England and (b) in the United States.
4. Why have not all courts in the States which have probation laws permitting the use of probation put on probation officers?

⁵³ Chute, *State Supervision of Probation* (Albany, N. Y.) For standards see *Journal of Criminal Law and Criminology*, February, 1923, pp. 601-604, *Juvenile Court Standards*, Children's Bureau Publications, No. 121 (Washington, 1923).

5. From the procedure of the probation officer in the case of Otto Wengierski make an outline of the qualities desirable in a probation officer.
6. Suppose that you were deputed by a body of citizens to appear before a county board from which body the money would have to be got for the support of a trained probation officer, what are the arguments you would make to induce them to vote the money? (Outline a brief of the arguments)
7. If you were a judge with the power to decide whether you would use probation or not, under what conditions would you refuse to employ that method with delinquents?
8. How could the evil complained of by Kocourek have been obviated?
9. What principles does the case of Otto Wengierski in the previous chapter illustrate?
10. If you were preparing to become a probation officer, what kind of training would you think necessary?
11. What advantages has a system of local administration under State supervision? a State department of probation actually handling the probationers turned over to it by the court?
12. What are the dangers of indeterminate probation? the advantages?
13. What are the advantages of providing for limiting the function of the court to trying the accused and leaving to a board the determination of the treatment of the convicted? the dangers and difficulties?

CHAPTER XXXV

A PROGRAM OF TREATMENT AND PREVENTION

AS one looks back over the history of penal treatment he cannot fail to be impressed by the somewhat meager results of society's immemorial struggle with crime and the criminal. In the light of modern science the experiments of society in dealing with the criminal have been based upon false theories. An unsound social psychology lies back of most penal treatment and has given it its often brutal and unsocialized character. Unconscious of the rôle of custom, tradition, superstition, and prejudice, society has largely based its treatment of the criminal upon fear, hate, lust for power, and selfishness. Treatment has been begotten of the emotional reaction to a situation rather than of a rational consideration of the causes of crime and of the purposes of punishment. Resting upon an erroneous social philosophy, it has disregarded the welfare of the individual and sacrificed large numbers in the supposed interest of the State, at the same time allowing others to escape. The prison system motivated by the false theory that the prison should be a place of repression instead of an agency to reorganize the offender's plan of life and his habitual responses to life situations, has been guilty of tyrannies long outgrown in other social institutions. Because of an antiquated judicial system justice has gone leaden-footed, and the professional criminal has waxed fat. The findings of modern psychology and sociology have had too little application in the campaign against crime. In short, the limited success of society in its struggle with criminals has been due to the use of antiquated methods founded upon an unscientific basis.

Yet, in the nine years since this book was first published some progress has been made. In some courts procedure has been modernized. In certain States provision has been made to secure before sentence is pronounced information as to the physical, mental, emotional, and social history of the accused. More careful study of the prisoner in the institution—of his history and backgrounds, of his physical and mental state—is made in an increasing number of cases before decision is rendered as to whether he is fit for parole or pardon. In a few cases prison authorities now take account of the results of these studies in attempting to adjust institutional treatment to the individual. While the indeterminate sentence is nowhere

in this country or abroad strictly indefinite, California has provided that certain convicted persons be handed over to a classification and sentencing board who determine after a study of the findings of an investigation of his whole history what shall be his sentence, and Illinois has ordained that for certain crimes the stretch between the minimum and maximum sentence shall be greater—from one year to fourteen years, from one year to twenty-five years, and from one year to life—thus giving the parole authorities greater leeway in determining on the basis of their study of the individual when he shall be placed beyond the walls. The use of probation has been extended, not only geographically but also in the sense that the legal definition of those who are eligible has been liberalized. Likewise with parole. The scientific study of the criminal has steadily progressed. We know more to-day than ever before of what makes an offender, although that "more" is little enough. Objective studies of the results of probation and of parole are being made. From the studies already made can be formulated prediction tables as to which prisoners should be admitted to parole or probation. Inch by inch the prison authorities are introducing scientific methods of studying the inmates in order that they may know better how to classify and treat them. Gradually prisoners are being classified not by kind of crime committed, by age, or by number of convictions, but by what is revealed in careful examination of each individual and of his whole history. Prisoners gradually are being segregated in institutions of different grades of security, and with different degrees of severity of discipline. The "silent system" has disappeared from many of our prisons and reformatories. Limitations upon communication with relatives and friends are gradually being lessened. Educational systems have been developed in some prisons and reformatories to an unprecedented degree. Plans for getting men outside the walls upon farms and in camps have been considered by an increasing number of penal authorities and have been put into operation by some. Hospital facilities have increased both in capacity and in equipment, albeit with little more than glacial speed. The training of prison officials has been started, although to the public the chief requirements are still "beef" rather than brains, while to the inmates the guard is still "a bull," not a gentleman. The training of policemen and detectives has been discussed somewhat widely, and here and there has been actually put into operation. An increasing number of States have unified their systems for the detection and apprehension of offenders. Under the New Deal the Federal government has extended its jurisdiction to crimes which have an interstate aspect, such as kidnapping persons and taking them across State lines. Probably further extension of its authority will occur if the State

and local police are not able to do a better job of detection and apprehension. It also cooperates with State and local authorities through its Bureau of Records situated at Washington. Gradually it is becoming clear that crime is not a local but at least a national matter and that success in repressing crime rests upon a closer coördination of the various authorities concerned with it.

Whatever is to take the place of the past strategy and tactics in the war on crime must take account of all that has been learned touching the causal factors of criminality and the technique of developing or altering human personality. Recent advances in science have thrown upon human nature a light never before available. In any program of penal treatment this knowledge must be applied.

A RATIONAL PROGRAM FOR THE TREATMENT OF THE OFFENDER

The first question to consider in mapping out a penal program is, What is the purpose of punishment? Retribution, only a survival of a natural reaction to what was believed to be socially injurious, as we have seen, leads to results socially undesirable. Any method of treatment which deprives one of his liberty may have an intimidating effect upon the criminal. Deterrence will be adequately provided if the convict is treated by any method which experience dictates as humane, reformatory, and protective to society. For most people harsh measures are not necessary. For the few professionals swift and certain segregation will be sufficiently deterrent. Furthermore, if the offender can be reformed, society will be protected and the man himself restored to usefulness. May we not say, therefore, that the main purpose of any program of penal treatment is the protection of society? Subsidiary thereto are intimidation, deterrence, and reformation.

Based upon a clear perception of the purpose of punishment and the application of all that science has to teach a rational penal program will include the following items.

1. A modern system of identification including (a) finger-print; (b) study of the type of crime and the technique by which committed; (c) a library of records of crimes and criminals; (d) laboratories in which criminals and materials may be studied by scientific methods.

2. A police force carefully selected and thoroughly trained in the best known methods.

3. Places of detention for those accused of crime which assure their appearance at trial but which do not outrage every canon of decency and which do not demoralize.

4. A system of bail bonds high enough in amount and secured by a proper amount of property to ensure appearance and permit release until trial, thus obviating unnecessary detention in jail or other places of detention.

5. Thoroughgoing reconstruction of criminal procedure in order to secure a speedy trial, bring out the facts concerning the crime, and enable the court and jury to ascertain the guilt or innocence of the accused. The use of a laboratory to determine the facts about the physical and mental condition of the accused and social investigation by probation officers or other persons in order to have a basis on which to determine treatment. In connection with reformed procedure there must be trained court officials, judges, experts, social investigators, parole and probation officials.

6. Methods of treatment directed to social protection but keeping in mind the social purposes of deterrence and reformation. Such methods will include (a) fine for certain adult offenders, provision for restitution and the payment of court costs to teach the lesson that transgression entails the deprivation of privileges; (b) probation for all offenders including misdemeanants and felons, a careful study of whom indicates that they may safely be trusted at large under supervision; (c) institutions for those who cannot be left at large but must be subjected to a period of institutional treatment. These institutions must be adapted to the nature of the criminal on the basis of the thoroughgoing investigations mentioned above. They include (1) hospitals, asylums, and colonies for the physically and mentally ill or defective, (2) schools for those who are victims of their ignorance or unskillfulness but who are able to profit by training; (3) industrial prisons for the hopelessly incorrigible, (4) parole granted after a proper period of training and a study of the characteristics of the individual under trained parole officers numerous enough really to supervise their charges; (5) absolutely indefinite sentences, the termination of probation, incarceration, and parole to be determined by a board composed of judicially minded experts possessing the power to transfer an offender to other institutions better adapted to his needs and to recall released offenders who offend again after proper trial at large.

7. Such change in the statutes as will limit the function of the trial court to the determination of the guilt or innocence of the accused and statutory provision for a board of treatment, the responsibility of which shall be to take the offender convicted in the court and, after careful study of all the facts provided by careful physical, mental, and social investigation, determine the kind of treatment to which he should be subjected. This board will determine whether he shall be put upon probation and, either

itself or through a sub-department of probation, determine the length of probation. It should also determine whether he should be recalled from probation and put into an institution. It should also, either directly or through a department of parole, handle the cases of those prisoners who are ready to be tried out in real life and determine the length of time they should be kept on parole. Likewise, it should have the determination of the length of a man's time in prison. Thus the various agencies and methods dealing with the correction or custody of the offender would be unified in one board of treatment and the responsibility for results placed directly upon the board instead of as at the present time being divided between many different authorities, even those authorities being handicapped by limitations set by statute.

The statutes should provide for a review of a case by a court or separate board to determine whether a man is being held in accordance with the aims of the law much as the writ of habeas corpus is used to determine whether a man under arrest or an insane person is held legally. This board would have to justify its work not only before the bar of public opinion but before the reviewing court or board with which would lie the determination of the propriety of the treatment given the prisoner by the board.

Such a program will discover and segregate those who commit crime because of physical or mental defects, will provide a graduated scheme of correction based upon a careful study of the individual characteristics and history, will either deter the habitual criminal or place him safely apart from his fellow-men, will individualize the treatment of each delinquent according to his characteristic tendencies, will reform the reformable, will make justice speedy and certain, and will, to the maximum degree possible, protect society from the menace of an increasing army of criminals and the burden of their detection, trial, and care.

A PROGRAM OF PREVENTION

Any program of treatment begins with end results. We cannot be content with gathering up and trying to mend those who fall over the precipice, we must build a fence along the top. We shall not be satisfied until we have shut off this growing stream of criminality at its source.

The increase of knowledge characteristic of the last seventy-five years has made clear to us some of the causative factors of criminality hitherto unknown. A program of prevention is encouraged by the light which science has thrown on the nature of human beings through psychology, psychiatry, the theory of heredity, and study of the influence of economic and social factors, and of political and social organization, upon conduct. While the

analysis of causation in social conduct has not yet proceeded far enough to enable us to be certain of the exact weight to be attributed to each set of factors, it has shown us where lie the springs of criminality. Experiment is now testing out the value of the different elements in the program of prevention suggested by these studies. It is therefore possible to offer an outline of a program for the prevention of delinquency.

Control of Population. As we have seen, crime varies directly with the density of population and with the intermixture of people of different races and nationalities having different customs, traditions, ideals, and habits. If there is a great surplus of population in a given country in relation to the economic organization and the industrial needs, economic factors of criminality become important. There are only two ways to control the *quantity* of people in a country: first, by control of immigration, and second, by control of the size of the family. The immigration laws can provide the first, the second can be managed only by the inculcation of ideals of proper education and comfort for children.

By the *quality* of population is meant the native ability in the stock necessary to adapt people to the circumstances of life. With the native population this can be controlled only by negative or positive eugenics. Defective stocks can be wiped out by sterilization or segregation so that they will not reproduce their kind. Whether research will or will not make it possible for us to ascertain how far sterilization can be applied without injustice, it certainly can be applied as a public health measure to defectives who have not yet been sentenced to a penal institution. If our communities will provide proper guardianship of the less menacing defectives, many of them, who if neglected would become criminals, may be saved from a career of criminality.

Segregation, however, has much more general approval than sterilization, and, while it adds greatly to the expense of care, some of the recent experiments in colonies show that a certain proportion of the defectives can be cared for at a rather small expense. In the meantime our penal institutions should follow the example of New York and Massachusetts in providing institutions for defective criminals.

Positive eugenics has been proposed as the other side of the method to secure a better quality of people. Galton proposed that it be made a kind of religion, that people should be frowned upon who pay no attention to the characteristics of the stock with which they mate. Hitherto, romantic love has quite largely controlled matings, but now it is suggested that people give consideration to the history of the family into which they propose to marry. Probably with the spread of the knowledge of the laws of heredity increasing attention will be given by young people to this matter.

Development of a Social Personality in Children. Studies in child psychology and the explorations of the psychoanalyst have revealed that many anti-social attitudes have their roots in early childhood. Repressions often begin then which later find expression in crime. Grudges are begotten which determine the whole future career. Attitudes toward authority, whether it be parental, legal, school, or what not, often are begotten by the experiences of children before three years of age.

As the child goes through his development in later periods, care must be taken to socialize his personality. The teacher in the school, some bully on the playground, or the attitude of some important person in the church, on the one hand, may give a bent to his character through an emotional shock which will produce criminality; or, on the other, people with understanding and good-will may so guide his developing character that he will adjust himself to the circumstances of life and become a useful citizen. Society will not go wrong if it throws about its children and youth personalities who understand how to guide the groping spirit into proper adjustment in a new world. Such an "understanding heart" is the secret of successful parents, teachers, clergymen, social workers, recreation leaders, and neighbors.

Control of the Economic Conditions. The economic conditions of life seem at first sight as relentless as the mills of the gods. Under the dominance of our *laissez faire* philosophy we were led to think that economic conditions were quite unalterable by the effort of man. However, while it is true that it is very difficult for society to control the cycles of business, the world market, and the organization of industry, it has been found possible to ameliorate unemployment, to provide against absolute need, to give vocational guidance to children, and to provide education such as will afford our youth a larger opportunity at economic independence.

It has been suggested that the Civilian Conservation Camps in this country under the New Deal may have had a good deal to do with the gradual drop in commitments to penal and correctional institutions during the last two years, in spite of the severe economic depression and the consequent disorganization of community, family, and personal relations. When I expressed two years ago to German prison officials astonishment at the decrease of commitments to German prisons, they said that the dole and the organization of German youth in the Brown Shirts and Steel Helmet organizations had had much to do with it.

Further experience will doubtless suggest ways more effective than any yet found of directing the economic factors to the up-building of character rather than to its destruction.

Direction of the Social Factors Which Play upon Personality. Consider how suggestion, tradition, custom, ideals, and public opinion press upon us like an atmosphere and control us. No less truly do the customs, traditions, and ideals of the smaller group in which we associate, which sometimes are at variance with the social standards of the larger group, make for criminality. These are man-made and therefore may be changed by man. Society's duty, therefore, is by education to bring into accordance with the mores of the great society the standards of the component group. In short any program of prevention must attempt to socialize our fundamental institutions. The home, the playground, the neighborhood, schools, churches, courts, business, and politics must be organized with reference to their effect upon developing personalities. No matter what else they do, unless they contribute to the development in childhood and youth of those attitudes which make for compliance with social norms of conduct, they have outlived their usefulness and may be distinct menaces to social welfare. The struggle with crime will not be successful until they do so, and efforts at prevention must be centered upon these important factors in the social development of each individual.

THE CHALLENGE OF CRIME

We have seen that for fifty years or more crime in the United States has been of grave proportions. Since the World War serious crime—murder, larceny, kidnapping, robbery, and rape—has increased. In our great cities and on our highways people are held up and robbed, even killed if they resist. Women are attacked and murdered. Adults and children are kidnapped for ransom. The same young men appear in these escapades again and again. They seem to bear charmed lives. The law holds few terrors for them. Against them the police and judges are sometimes impotent, although our prisons and reformatories are filled with an army of the less successful. Our agents of justice often are defeated. The law sets limits to the penalty; technicalities clog the machinery; hence the legal dawdling and the consequent frequent escape of a rascal whom every one believes guilty. Definite sentences let out the unreformed. Soft-headed, sentimental, and politically motivated governors and boards pardon human wolves. Untrained parole and probation officers and political boards with friends release miscreants. Our laws offer only a measure of social protection. Unwhipped villainy struts about with impunity, defiant of the law and its agents, the cynosure of weak and silly youth thirsting for cheap heroics. The situation is a challenge to all good citizens. Our lives are in constant jeopardy. Our property is unsafe. Virtue is threatened.

Consider also the waste of the ugly business. What could we not buy with the money crime costs us? When from a twentieth to a tenth of all taxes go for our struggle against crime without throttling it, something is wrong. When an army of people who live by crime in this country, in spite of an unusual death-rate among them and in the face of our efforts at deterrence and reformation, shows little diminution owing to constant recruiting from our children and youth, it should make us pause and think.

The situation challenges every patriotic citizen not wholly dead to the welfare of his country. Society itself is menaced. Every leader of men, every maker of opinion is faced by the seriousness of the problem. The social-climber club woman will respond, "Why it is necessary to think of such horrid things in this beautiful world?" The teacher, who conceives of her function as "keeping school," the professor who looks upon his college class as a necessary evil rather than a great opportunity to mold the new generation, will not be disturbed by the crime situation. The clergyman, busy with getting people to heaven, or engrossed in theological or ecclesiastical controversy, will be as deaf to this call as were the Israelites to Amos or the Scribes to Jesus. The politician-lawmaker, with his eye upon the votes in the next election, will not take the lead in this matter. The money-mad business man, intent upon the game of gain, whose patriotism is spelled "profits," we can hardly expect to hear the challenge. The lawyer, tender to hoary precedent, or busy devising new tricks to circumvent the intent of the law, to whom the law is not an instrument of justice but a great indoor sport and the road to wealth—we cannot count upon him in this fight. The fee-seeking defender of pimps, gamblers, bootleggers, crooks, thievish corporations, and sly grafters will be deaf to this clarion call of duty. The judge without imagination, to whom the authority of precedent is greater than the findings of science or the laws of God, who enjoys being an umpire in a game rather than a minister of justice, will scoff at the challenge. But let every one who loves humanity, or cares for our national future, who knows that social institutions may be changed for the better, who believes that conditions are modifiable, that man can mold his environment and control to a greater degree his destiny, answer the challenge. Responsibility for the continuance of this situation is his. With the zeal of a prophet, the calmness and patience of a scientist and the relentless perseverance of a Hebrew Jahveh or a Greek Nemesis let each resolve to do his part in the solution of this great social problem.

QUESTIONS AND EXERCISES

1. Show why it is necessary in a rational program for the treatment of the offender that science should be consulted. What sciences should be consulted?
2. Study the court system of your State and criticize it in the light of the discussion of the courts in this and previous chapters.
3. Show how in some detail the public school should be socialized to make it preventive of crime.
4. Work out a program by which the church can more adequately prevent crime.
5. Suggest changes in the conduct of business which would prevent crime.
6. Work out a program of the things you can do to help in the struggle against crime.
7. Discuss the practicability of the Federal Government's taking over more of the job of detecting and apprehending criminals.

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